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Supreme Court, U.S.
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No. 01-1375

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

NAVAJO NATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX
(VOLUME II)

THEODORE B. OLSON
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Counsel of Record
for Petitioner

PAUL E. FRYE
Rothstein Donatelli
500 Fourth Street, N.W.
Suite 400
Albuquerque, NM 87102
(505) 243-1443

Counsel of Record
for Respondent

PETITION FOR WRIT OF CERTIORARI FILED: MAR. 15, 2002
CERTIORARI GRANTED: JUNE 3, 2002

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MINING LEASE

CONTRACT NO. 14-20-0603-8580

Between

SENTRY ROYALTY COMPANY AND
THE NAVAJO TRIBE

THIS INDENTURE OF LEASE made and entered into sextuplicate effective the 1st day of February, 1964, by and between THE NAVAJO TRIBE, designated herein as "Lessor," and the SENTRY ROYALTY COMPANY, a Nevada-corporation with offices at 301 North Memorial Drive, St. Louis, Missouri 63102, herein designated as "Lessee,"

WITNESSETH:

ARTICLE I. CONSIDERATION

That the Lessor, for and in consideration of One ($1.00) Dollar, receipt whereof is here acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid and observed by the Lessee, does hereby lease unto said Lessee a tract of land lying and being within the Navajo Indian Reservation, County of Navajo, State of Arizona, more particularly described in Exhibit "C" attached hereto and containing 24,858 acres.

ARTICLE II. TERM AND POSSESSION

This lease is for a term of ten (10) years from the date hereof, and for so long thereafter as the substances produced are being mined by the Lessee in accordance with its terms, in paying quantities, for the purpose and with the exclusive right and license to prospect, mine, and strip such land for coal and kindred products, including other minerals, except oil and gas, as may be found in connection with said operations (by strip, auger, underground, or other generally approved mining methods). Lessee has the right and license, in connection with the operation of coal mining on the leased lands: to construct thereon buildings, pipelines, plants, tanks, and other structures; to make excavations, openings, stock piles, dumps, ditches, drains, roads, spur tracks, transmission lines, and other improvements; to place machinery and other equipment and fixtures upon said land, and do sll other things upon said leased premises that may be necessary in the efficient operation of coal mining thereon; to occupy so much of the surface of the leased lands as may be necessary to carry on the mining operations hereunder, including the right of ingress and egress; to develop and utilize water for use in its mining operations, provided, however, that at conclusion of mining operation all wells will be left properly cased and that any water not utilized in mining operations shall be made readily available for local Navajo use.

Lessee shall report promptly to Lessor the location and nature of any mineral deposits other than coal encountered on the leased land.

Lessor agrees to cooperate in good faith with Lessee in the securing and utilization of any additional surface that may be required or necessary to meet the needs of new industries that might be attracted to the area, and consistent therewith the Tribe will lease to any responsible industry.

It is contemplated that before the expiration of the ten-year term of this lease, Lessee will have such knowledge of the existence, location and workability of the coal reserves in excess of 200 million tons and of the feasibility of additional large-scale mining and plant operation, as to enable it to determine with reasonable certainty whether development of reserves in excess of 200 million tons can be successfully prosecuted. Accordingly, the Lessee is to submit not less than ninety (90) days prior to the expiration of the ten-year term a complete report to the Lessor of its past operations accompanied by declaration of the Lessee's intention regarding the development of reserves in excess of 200 million tons. Lessee shall concurrently inform Lessor of the possible future magnitude of the reserved development. If a reserve in excess of 200 million tons is proven, and application be made by the Lessee, preference shall be given Lessee over other applicants for the execution of separate leases on areas containing such surplus.

ARTICLE III. DEFINITION: "SUPERINTENDENT"

The term "superintendent" as used herein shall mean the "General Superintendent," Navajo Agency, Window Rock, Arizona.

ARTICLE IV. ROYALTY PAYMENTS

In consideration of the foregoing, Lessee hereby agrees to pay or cause to be paid to the General Superintendent for the use and benefit of the Navajo Tribe as royalties, the sums of money as follows:

A. Twenty-five ($.25) Cents per ton for all coal sold and utilized off the Navajo Reservation, Twenty ($.20) Cents per ton for all coal sold and utilized on the Navajo Reservation, whenever the average monthly gross realization therefrom is less that Four ($4.00) Dollars per ton.

B. Thirty ($.30) Cents per ton for all coal sold and utilized off the Navajo Reservation, Twenty-four ($.24) Cents per ton for all coal sold and utilized on the Navajo Reservation, whenever the average monthly gross realization therefrom is less that Four ($4.00) Dollars per ton but less that Five ($5.00) Dollars per ton.

C. Thirty-seven and one-half ($\$.37^{1/2}$) Cents per ton for all coal sold and utilized off the Navajo Reservation, and Thirty ($.30) Cents per ton for all coal sold and utilized on the Navajo Reservation, whenever the average monthly gross realization therefrom is Five ($5.00) Dollars or more per ton.

D. Whenever uranium ores are mind and sold by Lessee, royalty shall be paid at the rate provided for in the "Percentage Royalty Schedule" set out in Resolution of the Advisory Committee of the Navajo Tribal Council (ACS-37-55) dated September 27, 1955, as amended.

E. Whenever other valuable minerals are recovered and sold by Lessee, royalty shall be paid at the rate of Ten (10%) Per Cent of the sales price, f.o.b. Lessee's mine, when value can be determined at the mine. If the mine value cannot be determined, then the value shall be based on net smelter or processing plant returns which shall be the net smelter returns less transportation costs incurred by Lessee after ores have been mined.

For the purpose of this agreement, the term "Average Monthly Gross Realization" shall mean the average price of coal produced under the terms of this lease, f.o.b. Lessee's mine, and shall be determined by dividing the total monies received for the coal sold during a month by the total number of tons sold during such month, but no coal mined hereunder shall be sold to any affiliate or subsidiary of Lessee for the purpose of reducing the monthly Gross Realization.

All royalties accruing for any month shall be due and payable on or before the twenty-fifth of the succeeding month.

ARTICLE V. ANNUAL RENTAL

To pay or cause to be paid to the Navajo Tribe, in advance beginning with the date of approval of this lease as annual rental, One ($1.00) Dollar per acre per annum for each and every year during the initial five years of this lease, it being understood and agreed that said sum so paid shall be a credit on the royalties accruing during the year for which the payment of annual rental is made, and that said annual rental shall not be refunded to Lessee because of any subsequent surrender or cancellation hereof.

If at the termination of the initial five years of this lease, actual mining operations have not commenced, Lessee will pay or cause to be paid to the Navajo Tribe each year in advance for the next five years' remainder of the lease term, Two ($2.00) Dollars per acre per annum in advance for each and every year. Such advance rentals during the second five years of the lease term may be carried forward for a maximum of two additional years and credited against royalties earned during those two years when earned royalties exceed this minimum.

If at the termination of the first ten-year period, actual mining operations have not commenced, Lessor shall have the option of terminating this lease. However, if lease continues beyond the first ten- year period Lessee shall pay Two ($2.00) Dollars per acre per annum in advance for each and every year during the term of the lease, which may be carried forward for two (2) years and be credited against the earned royalties during those two years when earned royalties exceed this minimum.

It is understood by the parties hereto that if the Lessee can prove to the satisfaction of Navajo Tribe and the Secretary of the Interior bonafide contracts for the sale of substantial quantities of said coal, the maximum carry forward period may, at the discretion of the Lessor and the Secretary of the Interior, be increased from two years to five years, and advance rental paid at the same rate from the date of such proof until mining actually is commenced may also be credited against earned royalties in subsequent years.

ARTICLE VI. TERMINATION OF FEDERAL JURISDICTION

During the period that the land so leased is under Federal jurisdiction, the royalty provisions of this lease are subject to reasonable adjustment by the Secretary of the Interior or his authorized representative at the end of twenty years from the effective date of this lease, and at the end of each successive ten-year period thereafter. In the event of termination of Federal jurisdiction, the royalty provisions shall, in lieu of Secretarial adjustment, be subject to renegotiation between Lessor and Lessee at the times aforesaid, provided that if the parties are unable to agree, such royalty shall be submitted to arbitration.

In the event Federal jurisdiction shall have been terminated and the royalty provisions are subject to negotiation as provided in this section, within ten days after the request of either Lessor or Lessee for submission to arbitration, Lessee shall name one arbitrator and Lessor shall name one arbitrator, and the two named shall select within ten days next ensuing a third arbitrator. In the event the two arbitrators named by the parties cannot agree upon a third arbitrator, then any Judge of a United States District Court for the District of Arizona may select the third arbitrator. In determining the royalty provisions, the arbitrators shall consider all pertinent evidence to establish the value of coal and shall fix a royalty fair to both Lessor and Lessee under the circumstances existing at the time of such arbitration.

ARTICLE VII. DILIGENCE AND PREVENTION OF WASTE

Lessee shall (1) exercise diligence in the conduct of prospecting and mining operations, (2) carry on development and operations in a workmanlike manner and to the fullest possible extent, (3) commit no waste on the said land and suffer none to be committed upon the portion in its occupancy or use, (4) comply with all applicable laws, (5) take appropriate steps for the preservation of the property and the health and safety of workmen, and (6) surrender and return promptly the premises upon the termination of this lease to the Navajo Tribe or the [illegible], in as good condition as received, except for the ordinary wear, tear and depletion incident to mining operations and unavoidable accidents in the proper use of the premises, buildings, or permanent improvements erected thereon during the said term by the said Lessee. All Butler, Quonset, Armco and other buildings of like nature and office fixtures and records, personal property, tools, pumping and drilling outfits, boilers, engines, and mining machinery, and all other personal property and equipment of Lessee shall remain the property of the Lessee and may be removed at any time prior to two years after the termination of the lease by forfeiture or otherwise, provided the payments agreed upon by this lease have been made and the lease terms and regulations applicable thereto have been fully complied with, but not otherwise. Upon the expiration of this lease, Lessee's title to all permanent structural improvements, including the standard gauge railroad track from the leased premises to the nearest railroad if constructed under the provisions of Article XXI of this lease, shall vest in the Lessor.

ARTICLE VIII. SUSPENSION OF MINING OPERATIONS

Whenever permitted by law, if the Secretary of the Interior or his authorized representative considers the marketing facilities inadequate or the economic conditions unsatisfactory, he may, with the concurrence of the Advisory Committee of the Navajo Tribal Council, authorize the suspension of mining operations for such time as he considers advisable, but this shall not release the Lessee from paying the advance annual rental. Lessee shall not be in default hereunder, if in its discretion it temporarily discontinues mining operations because of unsatisfactory economic conditions, for periods of not to exceed six (6) consecutive months at any one time.

ARTICLE IX. MONTHLY STATEMENTS

Lessee shall keep an accurate account of all mining operations, showing the sales, price, dates, purchasers, and the whole amount of minerals mined, the amount removed, and the gross receipts derived therefrom, and to furnish the Superintendent, and the Treasurer of said Tribe, sworn monthly reports thereon not later than the twenty-fifth of the succeeding month; and all sums due as royalty and advance rental shall be a lien on all property of the Lessee upon the site, including implements, tools, movable machinery, and upon all other personal chattels used in operation upon said property, and upon all of the unsold minerals obtained from the land herein leased, as security for payment of said sums.

An audit of the Lessee's applicable accounts and books shall be made annually or at such times as may be directed by the Superintendent by certified public accountants approved by the Secretary of the Interior and at the expense of the Lessee.

The Lessee shall furnish free of cost a copy of such audits to the Secretary of the Interior through the Superintendent and to the Navajo Tribe within thirty (30) days after the completion of each auditing.

ARTICLE X. REGULATIONS

Lessee shall abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases, including but not limited to applicable provisions of 30 CFR 211 and 25 CFR 171; provided that no regulations hereafter approved shall effect a change in rate of royalty, the annual rental herein specified, or the term of this lease without the written consent of the parties to this lease; provided further, that the payments to be made by Lessee pursuant to Article V above shall be deemed to fulfill all requirements of said regulations with respect to annual development work and expenditures therefor, and shall be deemed to be in lieu thereof.

ARTICLE XI. ASSIGNMENT OF LEASE

Lessee shall not assign this lease or any interest therein by an operating agreement or otherwise, or sublet any portion of the leased premises, except with the prior approval of the Secretary of the Interior and the Advisory Committee of the Navajo Tribal Council. If this lease is divided by the assignment of an entire interest or any part of it, each part shall be considered a separate lease incorporating all the terms and conditions of the original lease. Lessee, however, shall have the right to assign or transfer its interest hereunder to Peabody Coal Company or a subsidiary or affiliate in which Peabody Coal Company has a greater than Fifty (50%) Per Cent interest.

ARTICLE XII. BOND

Lessee agrees to furnish such bond as may be required by the regulations of the Secretary of the Interior conditioned upon compliance with the terms of this lease.

ARTICLE XIII. INSPECTION

The leased premises and producing operations, improvements, machinery and fixtures thereon and connected therewith and all pertinent books and accounts of Lessee shall be open at all times for inspection by agents of the Lessor or any duly authorized representative of the Secretary of the Interior.

ARTICLE XIV. DISPOSITION OF SURFACE

Subject to the provisions of Article XXVII, the Lessor expressly reserves the right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the reasonable right of Lessee to such surface area necessary for mining; there is further reserved to the Navajo Tribe and the United States after consultation with Lessee the right to construct, use and maintain roads, pipelines, power lines, and telephone lines on and across said lands.

ARTICLE XV. SURRENDER AND TERMINATION

The Lessee shall have the right at any time during the term hereof to surrender and terminate this lease as to all or any compact and contiguous block of the leased lands covered hereby upon the payment of all rentals, royalties and other obligations due and payable to that date to the Lessor, and the further sum of One ($1.00) Dollar, provided Lessee has complied with Article XXX with respect to reseeding. If this lease has been recorded, Lessee shall file a recorded release with his application to the Superintendent for termination of this lease.

ARTICLE XVI. CANCELLATION AND FORFEITURE

When, in the opinion of the Mining Engineer of the Navajo Tribe and the Secretary of the Interior, before restrictions are removed, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior and the Navajo Tribe shall have the right at any time after thirty (30) days' notice to Lessee, specifying the terms and conditions violated, and after a hearing, if Lessee shall so request, if such violation is not cured within thirty (30) days of receipt of notice, to declare this lease null and void, Lessor shall then be entitled and authorized to take immediate possession of the land.

ARTICLE XVII. SUCCESSORS IN INTEREST OR ASSIGNS

It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the successors or assigns of the respective parties hereto.

ARTICLE XVIII. ACQUISITION BY GOVERNMENT EMPLOYEES

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

ARTICLES XIX. NAVAJO EMPLOYMENT PREFERENCE

Lessee agrees to employ Navajo Indians when available in all positions for which, in the judgment of Lessee, they are qualified, and to pay prevailing wages to such Navajo employees and to utilize services of Navajo contractors whenever feasible.

Lessee shall make a special effort to work Navajo Indians into skilled, technical and other higher jobs in connection with Lessee's operations under this release.

ARTICLE XX. COVENANT TO HOLD HARMLESS

Lessee will hold the Navajo Tribe and the United States harmless from any suit or claim for personal injuries or property damage arising out of acts or omissions of Lessee or its agents.

ARTICLE XXI. RAILROAD CONSTRUCTION

Provided there is discovered on the premises described in Exhibit "C" attached, 200 million tons of merchantable and economically minable coal, and if Lessee has, or can secure, suitable contracts for the sale of 35 million tons of coal involving rail delivery off the Reservation during a maximum period of twenty years to justify the investment, then Lessee agrees to commence or cause to be commenced and completed with dispatch during the first ten (10) years after the expiration of Lessee's Drilling and Exploration Permit, the construction of a standard gauge railroad track from the leased premises to the nearest railroad approximately 130 miles distant. Lessor agrees to furnish to Lessee or the builder of the railroad, without cost, the necessary rights of way and permits across Navajo Tribal lands.

Lessee agrees that when and if such railroad connection is built, the Navajo Tribe shall have the right, subordinate to the uses necessary and incident to the Lessee's business, to make nonexclusive use thereof for the Tribe's businesses and purposes, excluding the shipment of coal and organic fuels originating on the Reservation, without compensating the Lessee for any part of the cost it may bear of the construction and operation of the railroad connection; provided, however, the Tribe shall pay the lawful tariffs applicable to such uses and shipments as it make thereon; and Lessees or designees of the Tribe shall have an option for the nonexclusive use of such railroad connection upon the condition that said Lessees or designees so using said railroad connection will first pay to the Lessee a reasonable charge therefor, based on the distributive share, borne by Lessee, of the cost of construction, maintenance and operation of the railroad, and also based on the proportionate use thereof by the respective parties, and provided further that such use does not interfere with the necessary and convenient use by Lessee.

ARTICLE XXII. OBSERVANCE OF TRIBAL RESOLUTIONS

"Lessee agrees to comply with all lawful resolutions adopted by the Navajo Tribal Council."

ARTICLE XXIII. TERMINATION OF FEDERAL TRUST RESPONSIBILITY

Nothing contained in this lease shall operate to delay or prevent the termination of Federal trust responsibility with respect to the land during the term of this lease; however, such termination shall not serve to abrogate this lease. In the event of such termination, all powers, duties or other functions of the Secretary of the Interior or his authorized representative shall terminate, and the responsibility for enforcing compliance with the covenants of this lease shall be assumed by Lessor, his successors or assigns.

ARTICLE XXIV. USE OF PREMISES FOR UNLAWFUL CONDUCT

The Lessee further agrees that he will not use or permit to be used any part of said premises for any unlawful conduct or purpose whatsoever; that he will not use or permit to be used any part of said premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto, and that any violation of this clause by Lessee, or with his knowledge, shall render this lease voidable at the option of the Secretary of the Interior and with the concurrence of the Navajo Tribe, provided that if the sale of liquor become legal this covenant shall be voided.

ARTICLE XXV. REDUCTION OF ANNUAL RENTAL PAYMENTS

To the extent that after mining has started, operations of the Lessee after the initial five-year term, hereunder are, in the opinion of the Secretary of the Interior and the Navajo Tribe, interrupted for more than thirty (30) consecutive days by labor disputes, acts of God, acts of the public enemy, fire or other casualties beyond the control of the Lessee, then annual rental shall be reduced in the same proportion that the time the operations of the Lessee are interrupted bears to one (1) year.

ARTICLE XXVI. RESERVATIONS

The Navajo Tribe may hereafter grant to other persons, firms, or corporations, any oil and gas lease, license or permit upon land covered by this lease subject to the following limitations: (a) the provisions of this subsection shall be included in the oil and gas lease, license or permit granted by Lessor on the leased land, (b) oil and gas drilling and producing activities may be carried out on any part of the leased premises concurrent with Lessee's mining operations and related activities, (c) no oil rigs or installations of any kind shall be situated with such density as to unduly interfere with Lessee's rights to carry on its mining operations and related activities, and (d) no well may be drilled for

oil or gas at any location which, in the opinion of the Mining Supervisor of the Untied States Geological Survey, or the Mining Engineer of The Navajo Tribe, would result in undue waste of coal deposits or constitute a hazard to or interfere with mine operations being conducted for the extraction of coal and associated mineral from the land covered by this lease.

ARTICLE XXVII. PIPELINE CROSSINGS

A. Notwithstanding any other provision of this lease, The Navajo Tribe and the United States reserve the right without liability of any kind except as provided in this lease to grant to applicants rights of way for pipelines for the transportation of oil, gas, helium or petroleum products, and for telephone, telegraph and water lines incident to the operation of such pipelines, across the lands embraced in this lease, upon the conditions that, prior to the grant of any such right of way, the applicant therefor, as a condition precedent to such grant, shall file with the General Superintendent of the Navajo Agency the following express undertakings in writing for the express benefit of Lessee:

(1) That applicant will either bury the pipeline to a sufficient depth or, at a place to be designated by Lessee, construct and maintain, at applicant's expense, a ramp, so that loaded vehicles, including Lessee's heavy mining equipment, may pass unhindered over said pipe. Whenever said pipeline is relocated pursuant to subsection (2) of this Section, applicant will either bury the relocated pipe or promptly construct and maintain, at its own expense, a suitable ramp in a new place designated by Lessee. Lessee shall not be responsible for damage

to said pipe caused by such vehicles and equipment so crossing said pipeline.

(2) That applicant will make adequate provisions in the construction of the pipeline so that, in the event it is determined by Lessee that mining operations should be conducted within the area of the designated pipeline crossing, or that a power or industrial plant or other building should be built in such area, the line can be expeditiously relocated so as not to interfere with Lessee's operations, and applicant shall make such relocation, including any necessary bridging, at its own expense, within ninety (90) days from receipt of notice in writing from Lessee requesting such relocation. If applicant fails to make such relocation within such ninety-day period, Lessee may relocate the line without liability and at the expense of applicant.

(3) Applicant will at all times keep, maintain and repair, at its own expense, the portion of the pipeline crossing the leased premises in good working order and repair, and in such condition as not to injure, endanger or interfere with Lessee or any person or property on or about the premises.

(4) That applicant will promptly pay any lawful taxes, charges or assessments placed upon or levied against the pipeline or improvements or appurtenances in connection therewith; provided, that applicant may contest the validity or amount of any such tax, charge or assessment and shall not be considered in violation of this stipulation until a reasonable time after final determination of such contest by a competent tribunal.

(5) That applicant will be responsible for any damage to or loss of property or injury to or death of any person directly or indirectly caused by the enjoyment of pipeline rights, and shall hold Lessee harmless and indemnify it against any and all claims therefor; and shall further hold Lessee harmless from and indemnify it against damage to or loss of property belonging to applicant or injury to or death of any person on or about the pipeline crossing on behalf of or at the invitation of applicant.

(6) (a) That applicant shall specify in writing the address to which all notices and requests to be given or made by Lessee may be mailed.

(b) Lessor agrees that:

(i) No pipeline right of way granted shall exceed fifty (50) feet in width;

(ii) Timely notice shall be given to Lessee of any application for pipeline rights over the leased premises before the same is granted; and

(iii) Any executed duplicate of the undertakings specified in subparagraph (a) and a true copy of the grant of pipeline rights shall be furnished Lessee upon the granting of any application for pipeline rights over the leased premises.

ARTICLE XXVIII. NOTICES

Any notice, demand or request provided for in this lease, or given or made in connection with it shall be deemed to be properly given if delivered in person, or sent by registered or certified mail, postage prepaid, or by telegram, to the persons specified below:

To or upon the Tribe:

Chairman
Navajo Tribal Council
Window Rock, Arizona

and

General Superintendent
Navajo Agency, Bureau of Indian Affairs
Window Rock, Arizona

To or upon Sentry Royalty Company:

President or Secretary
Sentry Royalty Company
301 North Memorial Drive
St. Louis, Missouri 63102

Either party may at any time, by written notice to the other, change the designation or address of the person so specified as the one to receive notices hereunder.

ARTICLE XXIX. PROTECTION OF NAVAJO IMPROVEMENTS AND EXISTING MINES

Notwithstanding any other provision of this lease, Lessee's operations hereunder shall be subject to the provisions of Navajo Tribal Council Resolution CJA-18-60, adopted January 22, 1960, entitled "To provide for the compensation of Navajo Indian Claimants of

improvements and customary use rights in areas adversely disposed of by the Navajo Tribe." Lessee shall promptly comply with the terms and conditions of said resolution in cooperation with the Land Investigations Department of the Navajo Tribe.

The Department of Land Investigations of the Navajo Tribe has estimated the damages compensable under the foregoing resolution which will probably result from Lessee's proposed operation under this lease at the sum of $ and receipt of double said sum by the General Superintendent of the Navajo Agency hereby is acknowledged, said monies shall be disbursed as provided in the aforementioned Navajo-Tribal Council Resolution CJA-18-60.

Lessee agrees that it will not sell coal to local reservation markets now being served by existing mines as of the date hereof operated by Navajo Indians, so long as these existing mines continue to service the local reservation markets. Lessee shall now, however, be in any manner restricted from developing new markets or uses for coal upon the reservation.

ARTICLE XXX. RESEEDING

Lessee agrees to cooperate fully with the Lessor and the Secretary of the Interior in seeking methods of reseeding areas where strip coal mining activities have been completed and to bear a fair proportionate share of the expense of such reseeding program. Where serious erosion hazards are created by operations of Lessee hereunder, Lessee agrees to take such corrective action as may be necessary, within the scope of normal soil conservation practices.

DOCUMENTS TO WHICH THIS LEASE IS SUBORDINATE

No oil and gas leases, mining permits, school sites or other use areas, or rights of way, under permit or lease within the parcel of land described in Exhibit C.

/s/ REB
SENTRY ROYALTY COMPANY

/s/ [Illegible]
Chairman
NAVAJO TRIBAL COUNCIL

IN WITNESS WHEREOF the parties hereto have caused this lease to be signed by their duly authorized officers the day and year first above written.

THE NAVAJO TRIBE OF INDIANS
Lessor

/s/ By /s/ [Illegible]
Chairman
Navajo Tribal Council

SENTRY ROYALTY COMPANY
Lessee

Attest:

/s/ WILLIAM A. SCHNEIDER
Secretary

By /s/ RALPH E. BAILEY
Vice President

APPROVED AUG 28 1964

/s/ JOHN C. DIBBERN [CONFIDENTIAL]
Assistant AREA DIRECTOR

Per I.O. Letter 1-12-62
(Realty-Minerals)
[7362-61]

PHOTOGRAPHED
INDEXED

#4098
FILED AND RECORDED AT THE REQUEST
Jennings, Strouss, Salmon & Trask
May 26th A.D. 1967 AT 8:00 O'CLOCK A.M.
IN DOCKET 259. Off. Records page 413-443
RECORDS OF NAVAJO COUNTY, ARIZONA Inclusive
/s/ Elda R. Probst RECORDER
By ____________________ DEPUTY

ACKNOWLEDGEMENT OF LESSOR

STATE OF ARIZONA)
ss.
COUNTY OF APACHE)

Before me, a notary public on this 31st day of January, 1964, personally appeared Raymond Nakai, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same in his official capacity as Chairman of the Navajo Tribal Council, for and on behalf of the NAVAJO TRIBE OF INDIANS, as its free and voluntary act and deed for the uses and purposes therein set forth.

/s/ [Illegible]
Notary Public

[Seal Omitted]
My commission expires:

My Commission Expires June 29, 1965

ACKNOWLEDGEMENT OF LESSEE

STATE OF MISSOURI)
ss.
CITY OF ST. LOUIS)

On this 27th day of January, 1964, before me appeared Ralph E. Bailey and William A. Schneider, to me personally known, who being by me duly sworn, did say that they are ______ President and __________

Secretary of SENTRY ROYALTY COMPANY (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Ralph E. Bailey and William A. Schneider acknowledges said instrument to be the free act and deed of said corporation.

WITNESS my hand and seal the day and year first above written.

Irma D. Onken
Notary Public

[Seal omitted]
My commission expires:
September 8, 1964

EXHIBIT "C"

Attached to mining lease between Sentry Royalty Company and the Navajo Tribe [eligible] and bounds description of Black Mesa coal mining lease, Kayenta, Arizona

Beginning at a point 6,400.0 ft. North and 11,855.0 ft. East of the Coal Mine
Triangulation station (Lat. 36 32' 44,597" N Long. 110 29' 35.691"W)
thence East 5985.0 ft., thence North 2640.0 ft., thence East 2640.0 ft.,
thence North 2640.0 ft., thence East 1320.0 ft., thence North 2640.0 ft.,
thence East 1320.0 ft., thence North 2640.0 ft., thence East 5280.0 ft.,
thence South 5280.0 ft., thence East 15,840.0 ft., thence North 5280.0 ft.,
thence East 10,550.0 ft., thence South 7920.0 ft., Thence West 5280.0 ft.,
thence South 2640.0 ft., thence West 8765.0 ft., thence South 2640.0 ft.,
thence West 3960.0 ft., thence South 5280.0 ft., thence East 6,600.0 ft.,
thence South 2640.0 ft., thence East 2575.0 ft., thence South 2640.0 ft.,
thence East 18,415.0 ft., thence South 9985.0 ft., thence West 44,750.0 ft.,
thence North 7340.0 ft., thence West 2640.0 ft., thence North 5280.0 ft.,
thence West 5150.0 ft., thence North 10,560.0 ft., to the point of beginning and containing 24,858 acres more or less, all in Navajo County, Arizona.

The above description contains the following sections and partial sections:

T37N R18E:
Sections 28 all, 33 all, 34 all, 35 all, 36 all, S $^{1/2}$ 32, NE 1/4 32, E $^{1/2}$ of SE $^{1/4}$ 29.

T36N R18E:
All of sections 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 21, 22, 23, 24, NW $^{1/4}$ 1, N 1/2 and SW $^{1/4}$ and W $^{1/2}$ of SE $^{1/4}$ 2, NW $^{1/4}$ and W $^{1/2}$ of NE $^{1/4}$ and S $^{1/2}$ 11, S $^{1/2}$ 2 12, E $^{1/2}$ 20, N 2063.0 ft. of NE $^{1/4}$ 29, N 2063.0 ft. 28, N 2063.0 ft. 27, N 2063.0 ft. 26, N 2063.0 ft. 25.

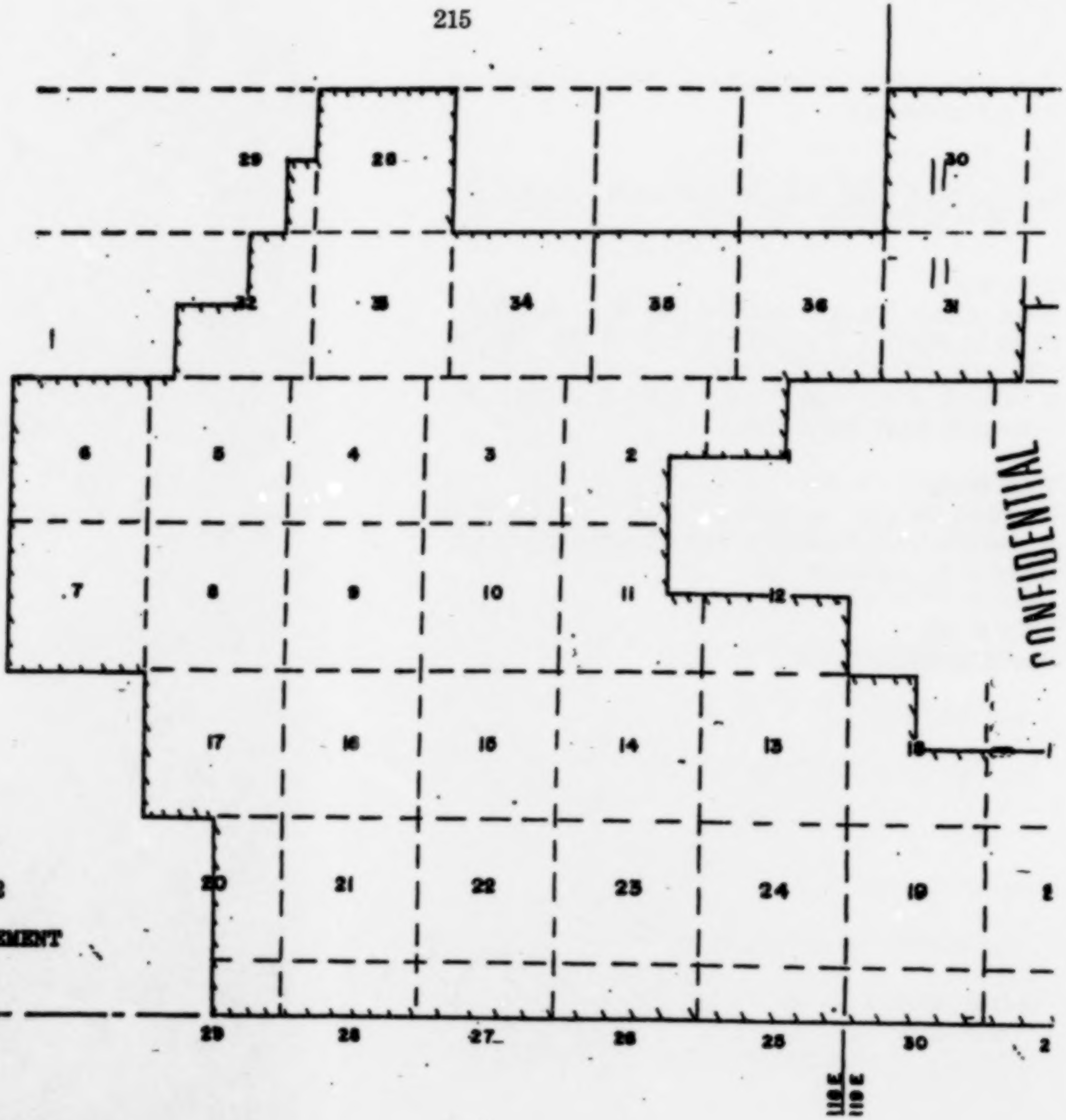
T36N R19E:
Sec 19 all, 209 all, 21 all, 22 all, S $^{1/2}$ 15, S $^{1/2}$ 16, S $^{1/2}$ 17, S $^{1/2}$ and NW $^{1/4}$ 18, N 2063.0 ft of 27, N 2063.0 ft. of 28, N 2063.0 ft. 29, N 2063.0 ft. 30.

T37N R 19E:
Sec. 29, 30, 31 all, N $^{1/2}$ 32.

EXHIBIT C

Attached to Mining Lease
between Sentry Royalty Co.
and The Navajo Tribe.

△COAL MINE
Lat. 36° 32' 44.897" N
Long 110° 29' 38.691" W



CONFIDENTIAL

SURVEY COMPLIES WITH OFFICIAL
PROTRACTION DIAGRAM 35, AREA 2
ARIZONA, BUREAU OF LAND MANAGEMENT

DOCKET

BEST AVAILABLE COPY

IN WITNESS WHEREOF the parties hereto have caused this Amendment No. I to Mining Lease, to be signed by their duly authorized officers as of the day and year first above written.

THE NAVAJO TRIBE OF INDIANS
Lessor

/s/ By /s/ ______________
RAYMOND NAKAI
Chairman
Navajo Tribal Council

SENTRY ROYALTY COMPANY
Lessee

Attest:

/s/ WILLIAM A. SCHNEIDER By /s/ RALPH E. BAILEY
Assistant Secretary *Vice President*

ACKNOWLEDGEMENT OF LESSOR

State of Arizona)
ss.
County of Apache)

Before me, a notary public on this 13 day of May, 1964 personally appeared RAYMOND NAKAI, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same in his official capacity as Chairman of the Navajo Tribal Council, for and on behalf of the NAVAJO TRIBE OF INDIANS, as its free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires: /s/ Walter F. Wolf, Jr.
Jan 6, 1967 Notary Public

ACKNOWLEDGEMENT OF LESSEE

State of Missouri)
ss.
City of St. Louis)

On this 28 day of April, 1960, before me appeared Ralph E. Bailey and William A. Schneider, to me personally known, who being by me duly sworn, did say that they are Vice President and Assistant Secretary of SENTRY ROYALTY COMPANY (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Ralph E. Bailey and William A. Schneider acknowledge said instrument to be the free act and deed of said corporation.

WITNESS my hand and seal the day and year first above written.

[Seal Omitted]
My commission expires: /s/ Irma D. Onken
Sept. 3, 1964 Notary Public

GUARANTY

In consideration of the execution of the above lease by the Navajo Tribe, the Peabody Coal Company hereby guarantees the due performance by Sentry Royalty Company of all covenants and agreements on its part therein contained, and the payment of all damages, costs and expenses which by virtue of said contract may become recoverable from said Sentry Royalty Company by the Navajo Tribe.

ATTEST: PEABODY COAL COMPANY

[Seal Omitted] By /s/ [Illegible]
/s/ [Illegible] President
Secretary Title

Amendment No. 1 to Mining Lease Between Sentry Royalty Company and The Navajo Tribe

THIS AMENDATORY AGREEMENT made and entered into, in sextuplicate effective the 1st day of April , 1964, by and between THE NAVAJO TRIBE, designated herein as "Lessor", and the SENTRY ROYALTY COMPANY, a Nevada corporation, with offices at 301 North Memorial Drive, St. Louis, Missouri, 63102, herein designated as "Lessee",

WITNESSETH, That reference is hereby made to that certain Mining Lease between Lessor and Lessee, executed by latter on January 27, 1964, covering 24,858 acres, more or less, in Navajo County, Arizona, and

WHEREAS it is desired by the parties to amend part of Article XXIX of said Mining Lease.

NOW THEREFORE, for and in consideration of One Dollar ($1.00) paid by Lessee to Lessor, and for other valuable considerations, the parties hereto hereby agree as follows:

1. The second paragraph of ARTICLE XXIX PROTECTION OF NAVAJO IMPROVEMENTS AND EXISTING MINES, of said Mining Lease, which reads as follows:

> "The Department of Land Investigations of The Navajo Tribe has estimated the damages compensable under the for going resolution which will probably result from Lessee's proposed operation under this lease at the sum of $ and receipt of double said sum by the General Superintendent of The Navajo Agency hereby is acknowledged, said monies shall be disbursed as provided in the aforementioned Navajo Tribal Council Resolution CJA-18-60."

is hereby deleted, and there is substituted in lieu thereof, a new second paragraph of said Article XXIX, which shall read as follows:

> "Because of the continuing nature of the proposed mining operation over many years, and because areas so adversely disposed of will be affected gradually over the years as mining operations progress, Lessee agrees to maintain a minimum balance with the General Superintendent of The Navajo Agency, of Five Thousand Dollars ($5,000), which sum will be replenished from time to time as disbursements are made. Said deposit shall be disbursed as provided in Resolution No. CJA-18-60."

2. Except as herein specifically amended, all the terms, conditions and obligations contained in said Mining Lease shall remain in full force and effect as therein provided.

Contract No. 14-20-0603-9910

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

MINING LEASE

Between

SENTRY ROYALTY COMPANY AND
THE NAVAJO TRIBE

State of Arizona

THIS MINING LEASE, made and entered into this 6th day of June, 1966, by and between THE NAVAJO TRIBE OF INDIANS, hereinafter referred to as "Lessor," and SENTRY ROYALTY COMPANY, a Nevada corporation having offices at 301 North Memorial Drive, St. Louis, Missouri, hereinafter referred to as "Lessee,"

WITNESSETH:

ARTICLE I. CONSIDERATION

That the Lessor, for and in consideration of One ($1.00) Dollar, receipt whereof is hereby acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid and observed by the Lessee, does hereby lease unto said Lessee a tract of land, lying and being within the County of Navajo, State of Arizona, more particularly described in Exhibit "D" attached hereto, containing 40,000 acres, more or less.

ARTICLE II. TERM AND POSSESSION

This lease is for a term of ten (10) years from the date of approval by the Secretary of the Interior or his authorized representative, and for so long thereafter as the substances produced are being mined by Lessee in accordance with its terms, in paying quantities, for the purpose and with the exclusive right and license to prospect, mine, and strip such lands for coal and kindred products, including other minerals, except oil and gas, as may be found in connection with said operations (by strip, auger, underground, or other generally approved mining methods). Lessee has the right and license, in connection with the operation of coal mining on the leased lands: to construct thereon buildings, pipelines, plants, tanks and other structures; to make excavations, openings, stock piles, dumps, ditches, drains, roads, spur tracks, transmission lines, and other improvements; to place machinery and other equipment and fixtures upon said land, and to do all other things upon said leased premises that may be necessary in the efficient operation of coal mining thereon; to occupy so much of the surface of the leased lands as may be necessary to carry on the mining operations hereunder, including the right to ingress and egress; to develop and utilize water obtained from wells located on the leased premises (including water obtained from the wells located on the premises covered by the lease between Sentry Royalty Company and the Navajo Tribe, dated February 1, 1964) for use in its mining operations including the transportation by slurry pipeline of coal mined from the leased premises and from the premises covered by said lease dated February 1, 1964; provided, however, that any water used for such a slurry pipeline shall be obtained from a depth greater than 1,000 feet below the surface and shall be metered and paid for by Lessee at the rate of *$5.00* per acre-foot annually. Any water not utilized in mining operations shall be made readily available for local Navajo use, and at the conclusion of mining operations all wells will be left properly cased. Any water obtained from the wells located on the premises described in Exhibit "D" which is not utilized in mining operations may also be made readily available for local Hopi use.

Lessee shall report promptly to Lessor the location and nature of any mineral deposits other than coal encountered on the leased land.

Lessor agrees to cooperate in good faith with Lessee in the securing and utilization of any additional surface that may be required or necessary to meet the needs of new industries that might be attracted to the area, and consistent therewith the Tribe will lease to any responsible industry.

It is contemplated that before the expiration of the ten-year term of this lease, Lessee will have such knowledge of the existence, location and workability of coal reserves found in the area covered by this lease in excess of 200 million tons and of the feasibility of additional large-scale mining and plant operation, as to enable it to determine with reasonable certainty whether development of reserves in excess of 200 million tons can be successfully prosecuted. Accordingly, the Lessee is to submit not less than ninety (90) days prior to the expiration of the ten-year term, a complete report to Lessor and to the Regional Mining Supervisor, United States Geological Survey, of its past operations accompanied by declaration of Lessee's intention regarding the development of reserves in excess of 200 million tons. Lessee shall concurrently inform Lessor of the possible future magnitude of the reserved development. If a reserve in excess of 200 million tons is proven within the leased area and application be made by Lessee, preference shall be given Lessee over other applicants for the execution of separate leases on areas containing such surplus, under such terms and conditions as may be agreed upon by Lessor and Lessee and approved by the Secretary of the Interior or his authorized representative.

ARTICLE III. ROYALTY PAYMENTS

In consideration of the foregoing, Lessee hereby agrees, subject to the provisions of Article IV-A, to pay or cause to be paid to the Secretary of the Interior or his authorized representative, for the use and benefit of the Navajo Tribe, royalties as follows:

A. Six and sixty-seven hundredths percent (6.67%) of the monthly gross realization, but in no event less than twenty-five (25) cents per ton, for all coal obtained from the leased premises which is sold and utilized off the Executive Order Area of December 16, 1882.

B. Five and thirty-three hundredths percent (5.33%) of the monthly gross realization, but in no event less than twenty (20) cents per ton, for all coal obtained from the leased premises which is sold and utilized on the Executive Order Area of December 16, 1882.

The term "gross realization," as used herein, means the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense. No coal mined hereunder shall be sold to any affiliate or subsidiary of Lessee for the purpose of reducing the gross realization.

C. Whenever uranium ores are mined and sold by Lessee, royalty shall be paid at the rate provided in Exhibit “E” attached hereto and by reference made a part hereof.

D. Whenever other valuable minerals are recovered and sold by Lessee, royalty shall be paid at the rate of ten percent (10%) of the sales price f.o.b. Lessee’s mine, when value can be determined at the mine. If the mine value cannot be determined, then the value shall be based on net smelter or processing plant returns which shall be the net smelter returns less transportation costs incurred by Lessee after ores have been mined.

E. During any lease year that earned royalties due the Navajo Tribe exceed the rentals due it for that lease year, the Lessee may credit a maximum of $2,000 per year of such excess earned royalties against the $10,000 advance royalty payment heretofore made to said Navajo Tribe until the entire advance, without interest, has been repaid.

All royalties accruing for any month shall be due and payable on or before the twenth-fifth of the succeeding month.

ARTICLE IV. ANNUAL RENTAL

Lessee agrees, subject to the provisions of Article IV-A, to pay or cause to be paid to the Secretary of the Interior or his authorized representative, for the use and benefit of the Navajo Tribe, in advance, beginning with the date of approval of this lease as annual rental,

one ($1.00) dollar per acre per annum for each and every year during the initial five years of this lease, it being understood and agreed that said sum so paid shall be a credit on the royalties accruing during the year for which the payment of annual rental is made, and that said annual rental shall not be refunded to Lessee because of any subsequent surrender or cancellation hereof.

At the end of the initial five years of this lease, Lessee, subject to the provisions of Article IV-A, will pay or cause to be paid each year in advance for the balance of the term of the lease, two ($2.00) dollars per acre per annum. Such advance rentals after the first five years of the lease term may be carried forward for a maximum of two additional years and credited against earned royalties during those two years when earned royalties exceed this minimum.

It is understood by the parties hereto that if Lessee can prove to the satisfaction of the Navajo Tribe and the Secretary of the Interior, bona fide contracts for the sale of substantial quantities of said coal, the maximum carry forward period, at the discretion of Lessor and the Secretary of the Interior, may be increased from two years to five years.

ARTICLE IV-A. ESCROW PAYMENTS

During the first seven years of this lease or until such earlier date as the interest of The Navajo Tribe in that portion of the Executive Order Area of December 16, 1882, in controversy between the Navajo Tribe and Hopi Tribe, including the leased premises (hereinafter referred to as “leased premises) shall have been finally determined or established by a final judgment in litigation between The Navajo Tribe and the Hopi Tribe or by a general settlement between The Navajo Tribe and The Hopi Tribe, or by a duly enacted and approved act of Congress, Lessee shall pay one-half of all sums due under Article III ("Royalty Payments") and Article IV ("Annual Rental") into an escrow fund as hereinafter provided. If by the date that Lessee's aforesaid obligation to make payments into said escrow fund ceases, it shall be determined or established by said final judgment or by said general settlement or by said act of Congress that The Navajo Tribe owns or is entitled to an interest greater than a one-half undivided interest in the leased premises, the Secretary of the Interior or his authorized representative shall be promptly paid from said escrow fund for the use and benefit of The Navajo Tribe that portion of said escrow fund that corresponds with and reflects the interest of the Navajo Tribe in said leased area in excess of a one-half undivided interest, and the remaining portion of said escrow fund, if any, shall be promptly paid Lessee.

(For example, if it should be determined by any of the aforesaid methods that the Navajo Tribe owns 100% of the leased area, then the entire escrow fund shall be promptly paid to the Secretary of the Interior or his authorized representative for the use and benefit of The Navajo Tribe. If it should be determined that The Navajo Tribe owns less than 100% of the leased area then that portion of said escrow fund that corresponds with and reflects the interest of The Navajo Tribe in excess of an undivided one-half interest in the leased area, shall be paid as aforesaid.)

If within the seven-year period above specified no such final judgment or general settlement or act of Congress is effected, the entire fund in escrow shall be returned to Lessee at the end of said seven-year period.

Lessor and Lessee shall enter into an escrow agreement with a mutually satisfactory bank containing the foregoing terms and such other terms and conditions as may be appropriate, including authority of the escrow agent to invest the escrow fund. The expenses of the escrow shall first be paid out of any sums earned on said escrow fund and, if such sums are insufficient, said expenses shall be borne equally by Lessor and Lessee.

If within the first seven years of this lease, it shall be determined or established by said final judgment, general settlement or act of Congress that The Navajo Tribe owns or is entitled to an interest greater than an undivided one-half interest in the leased premises, Lessee shall, from and after the effective date of such final judgment, general settlement or act of Congress, pay to the Secretary of the Interior or his duly authorized representative for the use and benefit of The Navajo Tribe, in lieu of the amounts specified in Article III ("Royalty Payments") and Article IV ("Annual Rental"), a percentage of said amounts equal to the percentage of interest of The Navajo Tribe in said Executive Order Area, as determined or established by said litigation, general settlement or act of Congress. If no such final judgment, general settlement or act of Congress is effected within the first seven years of this lease, Lessee shall, commencing with the eighth year of this lease, in lieu of the amounts specified in Article III ("Royalty Payments") and Article IV ("Annual Rental"), pay one-half of said amounts to the Secretary of the Interior or his duly authorized representative for the use and benefit of The Navajo Tribe.

ARTICLE V. DILIGENCE AND PREVENTION OF WASTE

Lessee shall (1) exercise diligence in the conduct of prospecting and mining operations, (2) carry on development and operations in a workmanlike manner, and to the fullest possible extent, (3) commit no waste on the said land and suffer none to be committed upon the portion in its occupancy or use, (4) comply with all applicable laws, (5) take appropriate steps for the preservation of the property and the health and safety of workmen, and (6) surrender and return promptly to the premises upon the termination of this lease, in as good condition as received, except for the ordinary wear, tear and depletion incident to mining operations and unavoidable accidents in the proper use of the premises, buildings, or permanent improvements erected thereon during the said term by said Lessee. All Butler, Quonset, Armco, and other buildings of like nature, and office fixtures and records, personal property, tools, pumping and drilling outfits, boilers, tracks, engines, and mining machinery, and all other personal property and equipment of Lessee shall remain the property of Lessee and may be removed at any time prior to two years after the termination of the lease by forfeiture or otherwise, provided the payments agreed upon by this lease have been made, and the lease terms and regulations applicable thereto have been fully complied with, but not otherwise. Lessee shall have no right, title or interest in any such improvements that have not been removed by Lessee within the two-year period after the termination of the lease. It is specifically understood, however, that Lessee may be required to remove any of such improvements within said

two-year period, or respond in damages for failure to do so.

ARTICLE VI. SUSPENSION OF MINING OPERATIONS

Whenever permitted by law, if the Secretary of the Interior or his authorized representative considers the marketing facilities inadequate or the economic conditions unsatisfactory, he may, with the concurrence of the Lessor, authorize the suspension of mining operations for such time as he considers advisable, but this shall not release Lessee from paying the advance annual rental. Lessee shall not be in default hereunder, if in its discretion it temporarily discontinues mining operations because of unsatisfactory economic conditions, for periods of not to exceed six (6) consecutive months at any one time.

ARTICLE VII. MONTHLY STATEMENTS

Lessee shall keep an accurate account of all mining operations, showing the sales, price, dates, purchasers, and the whole amount of minerals mined, the amount removed, and the gross receipts derived therefrom, and shall furnish the Secretary of the Interior or his authorized representative, and the Treasurer of the Navajo Tribe, sworn monthly reports thereon not later than the twenty-fifth of the succeeding month; and all sums due as royalty and advance rental shall be a lien on all of the unsold minerals obtained from the land herein leased as security for payment of said sums.

If Sentry wishes to claim any credit against royalties pursuant to Article III, Paragraph B, Sentry shall include in such statements an account of the coal tonnage mined from the leased premises which has been consumed or utilized on the Executive Order Area of December 16, 1882, during the month reported.

An audit of Lessee's applicable accounts and books shall be made annually or at such times as may be directed by the Secretary of the Interior or his authorized representative by certified public accountants approved by the Secretary of the Interior and at the expense of Lessee.

The Lessee shall furnish free of cost a copy of such audits to the Secretary of the Interior or his authorized representative and to the Navajo Tribe within thirty (30) days after the completion of each audit.

ARTICLE VIII. REGULATIONS

Lessee shall abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases, including but not limited to applicable provisions of 30 CFR 211 and 25 CFR 171; provided that no regulations hereafter approved shall effect a change in rate of royalty, the annual rental herein specified, or the term of this lease, without the written consent of the parties to this lease; provided further, that the payments to be made by Lessee pursuant to Article IV above shall be deemed to fulfill all requirements of said regulations with respect to annual development work and expenditures therefor, and shall be deemed to be in lieu thereof.

ARTICLE IX. ASSIGNMENT OF LEASE

Lessee shall not assign this lease or any interest therein by an operating agreement or otherwise, or sublet any portion of the leased premises, except with the prior approval of the Secretary of the Interior and

the Lessor. If this lease is divided by the assignment of an entire interest, or any part of it, each part shall be considered a separate lease incorporating all the terms and conditions of the original lease. Lessee, however, shall have the right to assign, transfer, or sublease its interest hereunder to Peabody Coal Company or a subsidiary or affiliate in which Peabody Coal Company has a greater than fifty (50) percent interest.

ARTICLE X. BOND

Lessee agrees to furnish the amount of such bond as may be required by the regulations of the Secretary of the Interior conditioned upon compliance with the terms of this lease.

ARTICLE XI. INSPECTION

The leased premises and producing operation, improvements, machinery and fixtures thereon and connected therewith and all pertinent books and accounts or Lessee shall be open at all times for inspection by agents of the Lessor or any duly authorized representative of the Secretary of the Interior.

ARTICLE XII. DISPOSITION OF SURFACE

Subject to the provisions of Article XX, the Lessor expressly reserves the right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the reasonable right of Lessee to such surface area necessary for mining; there is further reserved to Lessor and the United States after consultation with Lessee the right to construct, use and maintain roads, pipelines, power lines, and telephone lines on and across said lands.

ARTICLE XIII. SURRENDER AND TERMINATION

The Lessee shall have the right at any time during the term hereof to surrender and terminate this lease as to all or any compact and contiguous block of the leased lands covered hereby in not less than ten-acre parcels, upon the payment of all rentals, royalties, and other obligations due and payable to that date to the Lessor, and the further sum of one ($1.00) dollar, provided Lessee has complied with Article XXIV with respect to reseeding.

If this lease has been recorded, Lessee shall file a recorded release with his application to the Secretary of the Interior or his authorized representative for termination of this lease.

ARTICLE XIV. CANCELLATION AND FORFEITURE

When, in the opinion of the Lessor and the Secretary of the Interior, before restrictions are removed, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior and Lessor shall have the right at any time after thirty (30) days' notice to Lessee, specifying the terms and conditions violated, and after a hearing, if Lessee shall so request, if such violation is not cured within thirty (30) days of receipt of notice, to declare this lease null and void, and Lessor shall then be entitled and authorized to take immediate possession of the land.

ARTICLE XV. SUCCESSORS IN INTEREST OR ASSIGNS

It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the successors or assigns of the respective parties hereto.

ARTICLE XVI. ACQUISITION BY GOVERNMENT EMPLOYEES

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

ARTICLE XVII. EMPLOYMENT PREFERENCE

Lessee agrees to employ Navajo Indians when available in all positions for which, in the judgment of Lessee, they are qualified, and to pay prevailing wages to such Navajo employees and to utilize services of Navajo contractors whenever feasible.

Lessee shall make a special effort to work Navajo Indians into skilled, technical and other higher jobs in connection with Lessee's operations under this lease. Lessee may at its option extend the benefits of this Article to Hopi Indians.

ARTICLE XVIII. COVENANT TO HOLD HARMLESS

Lessee will hold the Navajo Tribe and the United States harmless from any suit or claim for personal injuries or property damage arising out of acts or omissions of Lessee or its agents.

ARTICLE XIX. USE OF PREMISES FOR UNLAWFUL CONDUCT

The Lessee further agrees that it will not use or permit to be used any part of said premises for any unlawful conduct or purpose whatsoever. That it will not use or permit to be used any part of said premises for the manufacture, sale, gift, transportation, drinking, or storage of intoxicating liquors or beverages, and that any violation of this clause by Lessee, or with its knowledge, shall render this lease voidable at the option of the Secretary of the Interior and with the concurrence of the Navajo Tribe.

ARTICLE XX. RESERVATIONS

Lessor may hereafter grant to other persons, firms, or corporations, any oil and gas lease, license or permit upon land covered by this lease subject to the following limitations: (a) the provisions of this Article and Article XXI shall be included in any oil and gas lease, license or permit granted by Lessor on the leased land; (b) oil and gas drilling and producing activities may be carried out on any part of the leased premises concurrent with Lessee's mining operations and related activities; (c) no oil rigs or installations of any kind shall be situated with such density as to unduly interfere with Lessee's rights to carry on its mining operations and related activities; and (d) no well may be drilled for oil or gas at any location which, in the opinion of the Mining Supervisor of the United States Geological Survey, or the Lessor, would result in undue waste of coal deposits or constitute a hazard to or interfere with mine operations being conducted for the extraction of coal and associated minerals from the land covered by this lease.

ARTICLE XXI. PIPELINE CROSSINGS

A. Notwithstanding any other provision of this lease, the Lessor and the United States reserve the right without liability of any kind except as provided in this lease to grant to applicants rights of way for pipelines for the transportation of oil, gas, helium or petroleum products, and for telephone, telegraph and water lines incident to the operation of such pipelines across the lands embraced in this lease, upon the conditions that, prior to the grant of any such right of way, the applicant therefor, as a condition precedent to such grant, shall file with the Secretary of the Interior or his authorized representative the following express undertakings in writing for the express benefit of Lessee:

(1) That applicant will either bury the pipeline to a sufficient depth or, at a place to be designated by Lessee, construct and maintain a ramp, at applicant's expense, so that loaded vehicles, including Lessee's heavy mining equipment, may pass unhindered over said pipe. Whenever said pipeline is relocated pursuant to subsection (2) of this Section, applicant will either bury the relocated pipe or promptly construct and maintain, at its own expense, a suitable ramp in a new place designated by Lessee. Lessee shall not be responsible for damage to said pipe caused by such vehicles and equipment so crossing said pipeline.

(2) That applicant will make adequate provisions in the construction of the pipeline so that, in the event it is determined by Lessee that mining operations should be conducted within the area of the designated pipeline crossing, or that a power or industrial plant or other building should be built in such area, the line can be expeditiously relocated so as not to interfere with Lessee's operations, and applicant shall make such relocation, including any necessary bridging, at its own expense, within ninety (90) days from receipt of notice in writing from Lessee requesting such relocation. If appli-

cant fails to make such relocation within such 90 day period, Lessee may relocate the line without liability and at the expense of applicant.

(3) Applicant will at all times keep, maintain and repair, at its own expense, the portion of the pipeline crossing the leased premises in good working order and repair, and in such condition as not to injure, endanger or interfere with Lessee or any person or property on or about the premises.

(4) That applicant will promptly pay any lawful taxes, charges, or assessments place upon or levied against the pipeline or improvements or appurtenances in connection therewith; provided, that applicant may contest the validity or amount of any such tax, charge or assessment, and shall not be considered in violation of this stipulation until a reasonable time after final determination of such contest by a competent tribunal.

(5) That applicant will be responsible for any damage to or loss of property, or injury to or death of any person directly or indirectly caused by the enjoyment of pipeline rights, and shall hold Lessee harmless and indemnify it against any and all claims therefor; and shall further hold Lessee harmless from and indemnify it against damage to or loss of property belonging to applicant, or injury to or death of any person on or about the pipeline crossing on behalf of or at the invitation of applicant.

(6) That applicant shall specify in writing the address to which all notices and requests to be given or made by Lessee may be mailed.

B. Lessor agrees that:

(i) No pipeline right of way granted shall exceed fifty (50) feet in width;

(ii) Timely notice shall be given to Lessee of any application for pipeline rights over the leased premises before the same is granted; and

(iii) An executed duplicate of the undertakings specified in Paragraph A, and a true copy of the grant of pipeline rights shall be furnished Lessee upon the granting of any application for pipeline rights over the leased premises.

ARTICLE XXII. LIABILITY FOR DAMAGES

The Lessee shall be liable for any and all damages resulting from operations under this lease, including injury to the Lessor, tenants, licensees and surface owners, and for any and all damages to, or destruction of, all property, including but not limited to crops, vegetation and improvements, caused by Lessee's operations hereunder.

ARTICLE XXIII. EXISTING MINES

Lessee agrees that it will not sell coal to local Reservation markets now being served by existing mines operated by Navajo Indians as of the date hereof, so long as these existing mines continue to service the local Reservation markets. Lessee shall not, however, be in any manner restricted from developing new markets or uses for coal upon the Reservation.

ARTICLE XXIV. RESEEDING

Lessee agrees to cooperate fully with the Lessor and the Secretary of the Interior in reseeding areas where strip coal mining activities have been completed and to bear the full expense of such reseeding program. Where serious erosion hazards are created by operations of Lessee hereunder, Lessee agrees to take such corrective action as may be necessary, within the scope of accepted soil conservation practices.

ARTICLE XXV. COMMENCEMENT OF MINING

Should the Lessee determine to commence its mining operations under its lease from the Navajo Tribe dated February 1, 1964, north of the premises leased herein, it agrees to bona fide commence mining operation on said premises described herein within two years after the commencement of mining operations on the said lease area of February 1, 1964. Should the Lessee determine to commence its mining operations on the premises described in this lease, then and in that event, it agrees to bona fide commence mining operations upon the area described in the said lease of February 1, 1964, within two years after the commencement of such original mining operations. After mining operations have been commenced in both of said areas Lessee agrees to mine coal on an equal basis from both of said areas insofar as the quality and quantity of the available coal from both of said areas and the relative cost of mining will reasonably permit.

Lessee agrees to make, at its own expense, all surveys and descriptions to properly locate and describe all properties designated for leasing or as may otherwise

be reasonably required under the terms of said Drilling and Exploration Permit and Mining Lease, the laws of the United States, or the Code of Federal Regulations.

ARTICLE XXVI. CONSTRUCTION OF RAILROAD: PIPELINE RIGHT OF WAY

If Lessee has, or can secure, suitable contracts for the sale of 36 million tons of coal involving rail delivery off the Reservation during a maximum period of twenty years to justify the investment, then Lessee agrees to commence or cause to be commenced and completed with dispatch during the first ten (10) years after the expiration of Lessee's Drilling and Exploration Permit, the construction of a standard gauge railroad track from the leased premises to the nearest railroad approximately 130 miles distant. Lessor agrees to furnish to Lessee or the builder of the railroad, without cost, the necessary rights of way and permits across Navajo Tribal lands.

Lessee agrees that when and if such railroad connection is built, the Navajo Tribe shall have the right, subordinate to the uses necessary and incident to Lessee's business, to make nonexclusive use thereof for the Tribe's businesses and purposes, excluding the shipment of coal and organic fuels originating on the Reservation, without compensating the Lessee for any part of the cost it may bear of the construction and operation of the railroad connection; provided, however, the Tribe shall pay the lawful tariffs applicable to such uses and shipments as it makes thereon; and Lessees or designees of the Tribe shall have an option for the nonexclusive use of such railroad connection upon the condition that said Lessees or designees so using said railroad connection will first pay to the Lessee a reasonable charge therefor, based on the distributive share, borne by Lessee, of the cost of construction, maintenance and operation of the railroad, and also based on the proportionate use thereof by the respective parties, and provided further that such use does not interfere with the necessary and convenient use by Lessee.

If Lessee shall enter into arrangements whereby coal mined from the leased premises and from the premises covered by the lease between Sentry Royalty Company and the Navajo Tribe, dated February 1, 1964, will be transported by a coal slurry pipeline, Lessor agrees to furnish, without cost, the necessary rights of way and permits across Navajo tribal lands.

ARTICLE XXVII. NOTICES

Any notice, demand, or request provided for in this lease, or given or made in connection with it, shall be deemed to be properly given if delivered in person, or sent by registered or certified mail, postage prepaid, or by telegram, to:

Chairman, Navajo Tribal Council
Window Rock, Arizona

Secretary of the Interior (2 copies)

Sentry Royalty Company
President or Secretary
301 North Memorial Drive
St. Louis, Missouri

Either party may at any time, by written notice to the other, change the designation of the address of the person so specified as the one to receive notices hereunder.

IN WITNESS WHEREOF the parties hereto have caused this lease to be signed by their duly authorized officers the day and year first above written.

THE NAVAJO TRIBE OF INDIANS, Lessor

By [Illegible]
Chairman, Navajo Tribal Council
[Illegible]

THE SENTRY ROYALTY COMPANY, Lessee

[Seal Omitted]

ATTEST:

/s/ [Illegible] /s/ By CE Stokes
Secretary President

Dated: June 6, 1966

THE NAVAJO TRIBE OF INDIANS, Lessor

By [Illegible]
Chairman, Navajo Tribal Council

APPROVED Jul 07 1966
[Illegible]
Area Director

FILED AND RECORDED AT THE REQUEST
Jennings, Strouss, Salmon & Trask
May 26th A.D. 1967 AT 8:00 O'CLOCK A.M.
IN DOCKET 259, Off.Records PAGE 349-384 Incl. RECORDS OF
NAVAJO COUNTY, ARIZONA
/s/ Elda R. Probat RECORDER
By ______________________ DEPUTY

ACKNOWLEDGEMENT OF LESSOR

State of Arizona)
)ss.
County of Apache)

Before me, a notary public on this 28th day of June 1966, personally appeared Raymond Nakai, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same in his official capacity as Chairman of the Navajo Tribal Council, for and on behalf of the Navajo Tribe of Indians, as his free and voluntary act and deed for the uses and purposes therein set forth.

/s/ Phyllis Nahkai
Notary Public

[Seal Omitted]
My Commission expires
November 25, 1967

ACKNOWLEDGEMENT OF LESSOR

State of Arizona)
)ss.
County of Apache)

Before me, a notary public on this 6th day of June, 1966, personally appeared Ned Hatathli, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same in his official capacity as Director, Resources Division, for and on behalf of the NAVAJO TRIBE OF INDIANS, as its free and voluntary act and deed for the uses and purposes therein set forth.

/s/ Phyllis Nahkai
Notary Public

[Seal Omitted]
My Commission expires
11/25/67

ACKNOWLEDGEMENT OF LESSEE

State of Missouri)
)ss.
City of St. Louis)

On this 6th day of June, 1966, before me appeared C.E. Stokes and C.S. Mulvaney, to me personally known, who being by me duly sworn, did say that they are President and Secretary of SENTRY ROYALTY

COMPANY (and that the seal affixed to said instrument is the corporatate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said C.E. Stokes and C.S. Mulvaney acknowledge said instrument to be the free act and deed of said corporation.

WITNESS my hand and seal the day and year first above written.

/s/ IRMA D. ONKEN
Notary Public

[Seal Omitted]
My commission expires:
Sept. 3, 1968

Contract No. 14-20-0450-5743

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

MINING LEASE

BETWEEN

THE HOPE TRIBE, STATE OF ARIZONA AND SENTRY ROYALTY COMPANY

THIS MINING LEASE, made and entered into this 6th day of June, 1966, by and between THE HOPI TRIBE of Arizona, organized pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat 984) as amended, "Lessor, and SENTRY ROYALTY COMPANY, a Nevada corporation having offices at 301 N. Memorial Drive, St. Louis, Missouri, hereinafter referred to as "Lessee,"

WITNESSETH:

WHEREAS, under date of June 1, 1964, Lessor and The Navajo Tribe of Indians entered into an agreement with Lessee entitled "Drilling and Exploration Permit" authorizing Lessee to drill and explore for coal and obtain a mining lease on the premises covered by said permit, including the premises being leased hereby; and

WHEREAS, said agreement was supplemental agreement dated August 18, 1964 modified and amended; and

WHEREAS, said agreement, as modified and amended, was approved by the Secretary of the Interior and still remains in full force and effect is valid as to all parties, notwithstanding an attempt by the Navajo Tribe to unilaterally rescind the same; and

WHEREAS, the Hopi Tribe is legally bound to lease its one-half undivided interest in accordance with the terms of said agreement;

NOW THEREFORE, Lessor and Lessee agree as follows:

ARTICLE I. CONSIDERATION

That the Lessor, for and in consideration of One ($1.00) Dollar, receipt whereof is hereby acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid and observed by the Lessee, does hereby lease unto said Lessee its undivided one-half interest in a tract of land, held by the United States in trust for the Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, lying and being within the County of Navajo, State of Arizona, more particularly described in Exhibit "D" attached hereto, containing 40,000 acres.

ARTICLE II. TERM AND POSSESSION

This lease is for a term of ten (10) years from the date of approval by the Secretary of the Interior or his authorized representative, and for so long thereafter as the substances produced are being mined by the Lessee in accordance with its terms, in paying quantities, for the purpose and with the exclusive right and license to prospect, mine, and strip such lands for coal and kindred products, including other minerals, except oil and gas, as may be found in connection with said operations (by strip, auger, underground, or other generally

approved mining methods). Lessee has the right and license, in connection with the operation of coal mining on the leased lands: to construct thereon buildings, pipelines, plants, tanks, and other structures; to make excavations, openings, stock piles, dumps, ditches, drains, roads, spur tracks, transmission lines, and other improvements; to place machinery and other equipment and fixtures upon said land, and do all other things upon said leased premises that may be necessary in the efficient operation of coal mining thereon; to occupy so much of the surface of the leased lands as may be necessary to carry on the mining operations hereunder, including the right of ingress and egress: to develop and utilize water obtained from wells located on the leased premises for use in its mining operations including the transportation by slurry pipelines of coal mined from the leased premises and the premises covered by the lease between Sentry Royalty Company and The Navajo Tribe, dated February 1, 1964; provided, however, that any such water used for such a slurry pipe line shall be obtained from a depth greater than 1,000 feet below the surface and shall be metered and paid for by Lessee at the rate of $1.67 per acre-foot to Lessor annually. Should the Secretary of the Interior determine, at any time, that the operation of wells by Lessee is endangering the supply of underground water in the vicinity or so lowering the water table that other users of such water are being damaged, he may, at his option, either (1) require Lessee or Peabody Coal Company, at its own sole expense, to provide water in quantity and of quality equal to that formerly available from such underground supply to such other users, by deepening the letter's wells or otherwise, or (2) require Lessee or Peabody Coal Company, at its own sole expense, to obtain water for its mining and pipe line operations from another source, that will not significantly affect the supply of underground water in the vicinity. Any water obtained from wells located in the leased premises not utilized in mining operations (including the slurry pipe line) shall be made readily available for local Hopi use, and at the conclusion of mining operations all wells will be left properly cased. Any water obtained from wells located on the leased premises which is not used in mining operations (including the slurry pipe line) may also be made readily available for local Navajo use. Lessee agrees that it will also pay Lessor $1.67 per acre-foot annually for water obtained from wells located on the premises covered by the said lease between Sentry Royalty Company and The Navajo Tribe, dated February 1, 1964, which is used for the transportation by slurry pipe line of coal obtained from the premises covered by said lease and the premises covered by this lease.

Lessee shall report promptly to Lessor the location and nature of any mineral deposits other than coal encountered on the leased land.

Lessor agrees to cooperate in good faith with Lessee in the securing and utilization of any additional surface that may be required or necessary to meet the needs of new industries that might be attracted to the area, and consistent therewith the Tribe will lease to any responsible industry.

It is contemplated that before the expiration of the ten-year term of this lease, Lessee will have such knowledge of the existence, location and workability of coal reserves found in the area covered by this lease in excess of 200 million tons and of the feasibility of additional large-scale mining and plant operation, as to

enable it to determine with reasonable certainty whether development of reserves in excess of 200 million tons can be successfully prosecuted. Accordingly, the Lessee is to submit not less than ninety (90) days prior to the expiration of the ten-year term, a complete report to the Lessor and to the Regional Mining Supervisor, United States Geological Survey, of its past operations accompanied by declaration of the Lessee's intention regarding the development of reserves in excess of 200 million tons. Lessee shall concurrently inform Lessor of the possible future magnitude of the reserved development. If a reserve in excess of 200 million tons is proven within the leased area and application be made by the Lessee, preference shall be given Lessee over other applicants for the execution of separate leases on areas containing such surplus, under such terms and conditions as may be agreed upon by the Lessor and Lessee and approved by the Secretary of the Interior or his authorized representative.

ARTICLE III. ROYALTY PAYMENTS

In consideration of the foregoing, Lessee hereby agrees to pay or cause to be paid to the Secretary of the Interior or his authorized representative, for the use and benefit of the Hopi Tribe, royalties as follows:

A. Three and three hundred and thirty-five thousandths per cent (3.335%) of the monthly gross realization, but in no event less than twelve and one-half (12$^{1/2}$) cents per ton, for all coal sold and utilized off the Executive Order Area of December 16, 1882.

B. Two and six hundred and sixty-five thousandths per cent (2.665%) of the monthly gross realization, but in no event less than ten (10) cents per ton, for all coal obtained from the leased premises sold and utilized on the Executive Order Area of December 16, 1882.

The term "gross realization," as used herein, means the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense. No coal mined hereunder shall be sold to any affiliate or subsidiary of Lessee for the purpose of reducing the gross realization.

C. Whenever uranium ores are mined and sold by Lessee, royalty shall be paid to Lessor at one-half of the rate provided in Exhibit "E", attached hereto, and by reference made a part hereof.

D. Whenever other valuable minerals are recovered and sold by Lessee, royalty shall be paid to Lessor at the rate of five (5%) per cent of the sales price f.o.b. Lessee's mine, when value can be determined at the mine. If the mine value cannot be determined, then the value shall be based on net smelter or processing plant returns which shall be the net smelter returns less transportation costs incurred by Lessee after ores have been mined.

E. During any lease year that earned royalties due the Hopi Tribe exceed the rentals due it for that lease year, the Lessee may credit a maximum of $2,000.00 per year of such excess earned royalties against the $10,000.00 advance royalty payments made under the Drilling and Exploration Permit to said Hopi Tribe until the entire advance, without interest, has been repaid.

All royalties accruing for any month shall be due and payable on or before the twenty-fifth of the succeeding month.

ARTICLE IV. ANNUAL RENTAL

Lessee agrees to pay or cause to be paid to the Secretary of the Interior or his authorized representative, for the use and benefit of the Hopi Tribe, in advance, beginning with the date of approval of this lease as annual rental, fifty cents (50¢) per acre per annum for each and every year during the initial five years of this lease, it being understood and agreed that said sum so paid shall be a credit on the royalties accruing during the year for which the payment of annual rental is made, and that said annual rental shall not be refunded to Lessee because of any subsequent surrender or cancellation hereof.

At the end of the initial five years of this lease, Lessee will pay or cause to be paid to Lessor each year in advance for the balance of the term of the lease One ($1.00) Dollar per acre per annum. Such advance rentals after the first five years of the lease term may be carried forward for a maximum of two additional years and credited against earned royalties during those two years when earned royalties exceed this minimum.

It is understood by the parties hereto that if the Lessee can prove to the satisfaction of the Hopi Tribe and the Secretary of the Interior, bonafide contracts for the sale of substantial quantities of said coal, the maximum carry forward period, at the discretion of the Lessor and the Secretary of the Interior, may be increased from two years to five years.

ARTICLE V. DILIGENCE AND PREVENTION OF WASTE

Lessee shall (1) exercise diligence in the conduct of prospecting and mining operations, (2) carry on development and operations in a workmanlike manner and to the fullest possible extent, (3) commit no waste on the said land and suffer none to be committed upon the portion in its occupancy or use, (4) comply with all applicable laws, (5) take appropriate steps for the preservation of the property and the health and safety of workmen, and (6) surrender and return promptly the premises upon the termination of this lease, in as good condition as received, except for the ordinary wear, tear and depletion incident to mining operations and unavoidable accidents in the proper use of the premises, buildings, or permanent improvements erected thereon during the said term by the said Lessee. All Butler, Quonset, Armco and other buildings of like nature and office fixtures and records, personal property, tools, pumping and drilling outfits, boilers, tracks, engines, and mining machinery, and all other personal property and equipment of Lessee shall remain the property of the Lessee and may be removed at any time prior to two years after the termination of the lease by forfeiture or otherwise, provided the payments agreed upon by this lease have been made and the lease terms and regulations applicable thereto have been fully complied with, but not otherwise. Lessee shall have no right, title of interest in any of such improvements that have not been removed by Lessee within the two-year period after the termination of the lease. It is specifically understood, however, that Lessee may be required to remove any of such improvements within said two-year period, or respond in damages for failure to do so.

ARTICLE VI. SUSPENSION OF MINING OPERATIONS

Whenever permitted by law, if the Secretary of the Interior or his authorized representative considers the marketing facilities inadequate or the economic conditions unsatisfactory, he may, with the concurrence of the Lessor authorize the suspension of mining operations for such time as he considers advisable, but this shall not release the Lessee from paying the advance annual rental. Lessee shall not be in default hereunder, if in its discretion it temporarily discontinues mining operations because of unsatisfactory economic conditions, for periods of not to exceed six (6) consecutive months at any one time.

ARTICLE VII. MONTHLY STATEMENTS

Lessee shall keep an accurate account of all mining operations, showing the sales, price, dates, purchasers, and the whole amount of minerals mined, the amount removed, and the gross receipts derived therefrom, and shall furnish the Secretary of the Interior or his authorized representative, and the Treasurer of said Tribe, sworn monthly reports thereon not later than the twenty-fifth of the succeeding month; and all sums due as royalty and advance rental shall be a lien on all of the unsold minerals obtained from the land herein leased, as security for payment of said sums.

If Sentry wishes to claim any credit against royalties pursuant to Article III, paragraph B, Sentry shall include in such statements an account of the coal tonnage mined from the leased premises which has been consumed or utilized on the Executive Order Area of December 16, 1882, during the month reported.

An audit of the Lessee's applicable accounts and books shall be made annually or at such times as may be directed by the Secretary of the Interior or his authorized representative by certified public accountants approved by the Secretary of the Interior and at the expense of the Lessee.

The Lessee shall furnish free of cost a copy of such audits to the Secretary of the Interior or his authorized representative and to the Hopi Tribe within thirty (30) days after the completion of each audit.

ARTICLE VIII. REGULATIONS

Lessee shall abide by and confirm to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases, including but not limited to applicable provisions of 30 CFR 211 and 25 CFR 171; provided that no regulations hereafter approved shall effect a change in rate of royalty, the annual rental herein specified, or the term of this lease without the written consent of the parties to this lease; provided further, that the payments to be made by Lessee pursuant to Article IV above shall be deemed to fulfill all requirements of said regulations with respect to annual development work and expenditures therefor, and shall be deemed to be in lieu thereof.

ARTICLE IX. ASSIGNMENT OF LEASE

Lessee shall not assign this lease or any interest therein by an operating agreement or otherwise, or sublet any portion of the leased premises, except with the prior approval of the Secretary of the Interior and the Lessor. If this lease is divided by the assignment of an entire interest or any part of it, each part shall be considered a separate lease incorporating all the terms

and conditions of the original lease. Lessee, however, shall have the right to assign, transfer, or sublease its interest hereunder to Peabody Coal Company or a subsidiary or affiliate in which Peabody Coal Company has a greater than Fifty (50%) per cent interest.

ARTICLE X. BOND

Lessee agrees to furnish the amount of such bond as may be required by the regulations of the Secretary of the Interior conditioned upon compliance with the terms of this lease.

ARTICLE XI. INSPECTION

The leased premises and producing operation, improvements, machinery and fixtures thereon and connected therewith and all pertinent books and accounts of Lessee shall be open at all times for inspection by agents of the Lessor or any duly authorized representative of the Secretary of the Interior.

ARTICLE XII. DISPOSITION OF SURFACE

Subject to the provisions of Article XX, the Lessor expressly reserves the right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the reasonable right of Lessee to such surface area necessary for mining; there is further reserved to the Lessor and the United States after consultation with Lessee the right to construct, use and maintain roads, pipelines, powerlines, and telephone lines on and across said lands.

ARTICLE XIII. SURRENDER AND TERMINATION

The Lessee shall have the right at any time during the term hereof to surrender and terminate this lease as to all or any compact and contiguous block of the leased lands covered hereby in not less than ten-acre parcels, upon the payment of all rentals, royalties and other obligations due and payable to that date to the Lessor, and the further sum of One ($1.00) Dollar, provided Lessee has complied with Article XXIV with respect to reseeding. If this lease has been recorded, Lessee shall file a recorded release with his application to the Secretary of the Interior or his authorized representative for termination of this lease.

ARTICLE XIV. CANCELLATION AND FORFEITURE

When, in the opinion of the Lessor and the Secretary of the Interior, before restrictions are removed, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior and Lessor shall have the right at any time after thirty (30) days' notice to Lessee, specifying the terms and conditions violated, and after a hearing, if Lessee shall so request, if such violation is not cured within thirty (30) days of receipt of notice, to declare this lease null and void, and Lessor shall then be entitled and authorized to take immediate possession of the land.

ARTICLE XV. SUCCESSORS IN INTEREST OR ASSIGNS

It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the successors or assigns of the respective parties hereto.

ARTICLE XVI. ACQUISITION BY GOVERNMENT EMPLOYEES

No lease, assignment thereof or interest therein will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

ARTICLE XVII. EMPLOYMENT PREFERENCE

Lessee agrees to employ Hopi Indians when available in all positions for which, in the judgment of Lessee, they are qualified, and to pay prevailing wages to such Hopi employees and to utilize services of Hopi contractors whenever feasible. Lessor may by agreement with the Navajo Indians extend the benefits of this article to the Navajo Indians.

Lessee shall make a special effort to work Hopi and Navajo Indians into skilled, technical and other higher jobs in connection with Lessee's operations under this lease.

ARTICLE XVIII. COVENANT TO HOLD HARMLESS

Lessee will hold the Hopi Tribe and the United States harmless from any suit or claim for personal injuries or property damage arising out of acts or omissions of Lessee or its agents.

ARTICLE XIX. USE OF PREMISES FOR UNLAWFUL CONDUCT

The Lessee further agrees that it will not use or permit to be used any part of said premises for any unlawful conduct or purpose whatsoever. That it will not use or permit to be used any part of said premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages, and that any violation of this clause by Lessee, or with its knowledge, shall render this lease voidable at the option of the Secretary of the Interior and with the concurrence of the Hopi Tribe.

ARTICLE XX. RESERVATIONS

Lessor may hereafter grant to other persons, firms, or corporations, any oil and gas lease, license or permit upon land covered by this lease subject to the following limitations: (a) the provisions of this Article and Article XXI shall be included in any oil and gas lease, license or permit granted by Lessor on the leased land; (b) oil and gas drilling and producing activities may be carried out on any part of the leased premises concurrent with Lessee's mining operations and related activities; (c) no oil rigs or installations of any kind shall be situated with such density as to unduly interfere with Lessee's rights to carry on its mining operations and related activities; and (d) no well may be drilled for oil or gas at any location which, in the opinion of the Mining Supervisor of the United States Geological Survey, or the Lessor, would result in undue waste of coal deposits or constitute a hazard to or interfere with mine operations being conducted for the extraction of coal and associated mineral form the land covered by this lease.

ARTICLE XXI. PIPELINE CROSSINGS

A. Notwithstanding any other provision of this lease, the Lessor and the United States reserve the right without liability of any kind except as provided in this lease to grant to applicants rights of way for pipelines for the transportation of oil, gas, helium or petroleum

products, and for telephone, telegraph and water lines incident to the operation of such pipelines, across and lands embraced in this lease, upon the conditions that, prior to the grant of any such right of way, the applicant therefor, as a condition precedent to such grant, shall file with the Secretary of the Interior or his authorized representative the following express undertakings in writing for the express benefit of Lessee:

(1) That applicant will either bury the pipeline to a sufficient depth or, at a place to be designated by Lessee, construct and maintain a ramp, at applicant's expense, so that loaded vehicles, including Lessee's heavy mining equipment, may pass unhindered over said pipe. Whenever said pipeline is relocated pursuant to subsection (2) of this Section, applicant will either bury the relocated pipe or promptly construct and maintain, at its own expense, a suitable ramp in a new place designated by Lessee. Lessee shall not be responsible for damage to said pipe caused by such vehicles and equipment so crossing said pipeline.

(2) That applicant will make adequate provisions in the construction of the pipeline so that, in the event it is determined by Lessee that mining operations should be conducted within the area of the designated pipeline crossing, or that a power or industrial plant or other building should be built in such area, the line can be expeditiously relocated so as not to interfere with Lessee's operations, and applicant shall make such relocation, including any necessary bridging, at its own expense, within ninety (90) days from receipt of notice in writing from Lessee requesting such relocation. If applicant

fails to make such relocation within such ninety day period, Lessee may relocate the line without liability and at the expense of applicant.

(3) Applicant will at all times keep, maintain and repair, at its own expense, the portion of the pipeline crossing the leased premises in good working order and repair, and in such condition as not to injure, endanger or interfere with Lessee or any person or property on or about the premises.

(4) That applicant will promptly pay any lawful taxes, charges or assessments placed upon or levied against the pipeline or improvements or appurtenances in connection therewith; provided, that applicant may contest the validity or amount of any such tax, charge or assessment and shall not be considered in violation of this stipulation until a reasonable time after final determination of such contest by a competent tribunal.

(5) That applicant will be responsible for any damage to or loss of property, or injury to or death of any person directly or indirectly caused by the enjoyment of pipeline rights, and shall hold Lessee harmless and indemnify it against any and all claims therefor; and shall further hold Lessee harmless from and indemnify it against damage to or loss of property belonging to applicant, or injury to or death of any person on or about the pipeline crossing on behalf of or at the invitation of applicant.

(6) That applicant shall specify in writing the address to which all notices and requests to be given or made by Lessee may be mailed.

B. Lessor agrees that:

(i) No pipeline right of way granted shall exceed fifty (50) feet in width;

(ii) Timely notice shall be given to Lessee of any application for pipeline rights over the leased premises before the same is granted; and

(iii) An executed duplicate of the undertakings specified in paragraph A and a true copy of the grant of pipeline rights shall be furnished Lessee upon the granting of any application for pipeline rights over the leased premises.

ARTICLE XXII. LIABILITY FOR DAMAGES

The Lessee shall be liable for any and all damages resulting from operations under this lease, including injury to the Lessor, tenants, licensees and surface owners, and for any and all damage to, or destruction of, all property, including but not limited to crops, vegetation and improvements, caused by Lessee's operations hereunder.

ARTICLE XXIII. EXISTING MINES

Lessee agrees that it will not sell coal to local reservation markets now being served by existing mines operated by Hopi Indians as of the date hereof, so long as these existing mines continue to service the local reservation markets. Lessee shall not, however, be in any manner restricted from developing new markets or uses for coal upon the reservations.

ARTICLE XXIV. RESEEDING

Lessee agrees to cooperate fully with the Lessor and the Secretary of the Interior in reseeding areas where strip coal mining activities have been completed and to bear the full expense of such reseeding program. Where serious erosion hazards are created by operations of Lessee hereunder, Lessee agrees to take such corrective action as may be necessary, within the scope of accepted soil conservation practices.

ARTICLE XXV. PERMITS

If Lessee shall enter into arrangements whereby coal mined from the leased premises and from the premises covered by the lease between Sentry Royalty Company and the Navajo Tribe, dated February 1, 1964, will be transported by coal slurry pipe line, Lessor agrees to furnish, without cost, the necessary rights of way and permits across Hopi Tribal lands.

ARTICLE XXVI. NOTICES

Any notice, demand or request provided for in this lease, or given or made in connection with it shall be deemed to be properly given if delivered in person, or sent by registered or certified mail, postage prepaid, or by telegram, to the persons specified below:

To or upon the Tribe.

Chairman
Hopi Tribal Council
Keams Canyon, Arizona

To or upon the Secretary of the Interior (2 copies)

Both to Superintendent of Hopi Agency
Keams Canyon, Arizona

To or upon Sentry Royalty Company,

President or Secretary
Sentry Royalty Company
301 N. Memorial Drive
St. Louis, Missouri

Either party may at any time, by written notice to the other, change the designation or address of the person so specified as the one to receive notices hereunder.

IN WITNESS WHEREOF the parties hereto have caused this lease to be signed by their duly authorized officers the day and year first above written.

THE HOPI TRIBE OF INDIANS
Lessor

By DEWEY HEALING
DEWEY HEALING
Chairman, Hopi Tribal
Council

THE SENTRY ROYALTY COMPANY
Lessee

/s [Illegible]
Vice-President

FILED AND RECORDED AT THE REQUEST
Jennings, Strouss, Salmon & Trask
May 26th A.D. 1967 AT 8:00 O'CLOCK A.M.
IN DOCKET 259.Off.Records PAGE 385-412
RECORDS OF NAVAJO COUNTY, ARIZONA Inclusive
Ella R. Probst RECORDER
BY________________ DEPUTY

ACKNOWLEDGMENT OF LESSOR

State of Arizona)
)ss.
County of Apache)

Before me, a Notary Public, on this 29th day of June, 1966, personally appeared Dewey Healing, to me known to be the identical person who executed the within and foregoing lease and acknowledged to me that he executed the same in his official capacity as Chairman of the Hopi Tribal Council for and on behalf of the Hopi Tribe of Indians as its free and voluntary act and deed for the uses and purposes therein set forth.

/s/ [Illegible]
Notary Public

My Commission Expires: 7-13-1967

ACKNOWLEDGMENT OF LESSEE

State of Missouri)
)ss.
City of St. Louis)

On this 25th day of June, 1966 before me appeared E. R. Phelps to me personally known, who being by me duly sworn, did say that he is a Vice President of Sentry Royalty Company, and that the seal affixed to the foregoing instrument is the corporation seal of said corporation, and that said instrument was signed and

sealed in behalf of said corporation by authority of its Board of Directors and said E. R. Phelps acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal the day and year first above written.

/s/ [Illegible]
Notary Public
In and for the County of
St. Louis which adjoins the
City of St. Louis

My Commission Expires: Dec. 3, 1966

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona

The within Mining Lease is approved pursuant to authority delegated to Commissioner of Indian Affairs by Secretarial Order No. 2508 and by Commissioner to Area Director by Bureau Order No. 551 and Amendments thereto and under authority delegated by Washington Office letter of October 8, 1964 (Real Property Management Minerals 5427-64).

/s/ [Illegible]
ACTING Area Director

Date: June 20, 1966

State of Arizona)
ss.
County of Maricopa)

Before me, a Notary Public, in and for said county and State, on this 20th day of June, 1966, personally appeared George W. Hedden, whose name is subscribed to the foregoing Mining Lease, Contract No. 14-20-0450-5743, dated June 6, 1966, as ACTING Area Director, Phoenix Area Office, Bureau of Indian Affairs, now is and was at the time of signing the same, Acting Area Director of the Phoenix Area Office, Bureau of Indian Affairs; and he personally acknowledged to me that he executed said instrument as his free and voluntary act and deed for the uses and purposes set forth therein.

/s/ MARY M. GILBERT
Notary Public

My commission expires July 23, 19XX.

GUARANTY

In consideration of the execution of the above lease by the Hopi Tribe, Peabody Coal Company hereby guarantees the due performance by Sentry Royalty Company of all covenants and agreements on its part therein contained, and the payment of all damages, costs and expenses which by virtue of said lease may become recoverable from said Sentry Royalty Company by the Hopi Tribe.

ATTEST: PEABODY COAL COMPANY

/s/ MULVANEY By H. D. HAGEN
Secretary Vice President

Date: June 6, 1966

TRACT NO. 1

Beginning at the Department of Interior's Bureau of Land Management Mile Post 23.5, a brass plate marked Navajo, EO 1882, 23.5 M, and located on the 36°39' parallel of latitude thence east along said 36°30' parallel distance of 16,092.64'; thence south 3,719.18'; thence west 2,770.00'; thence south 3,650.00'; thence west 2,096.31'; thence south 3,902.08'; thence west 5,803.43'; thence South 24°17' west 7,198.18'; thence east 5,143.65'; thence north 79°27' east 2,013.07'; thence north 56°49' east 3,461.95'; thence south 59°47' east 3,795.59'; thence south 14,220.00'; thence east 1,470.06'; thence south 8,477.66'; thence west 21,351.27'; thence north 8,247.66'; thence east 7,361.27'; thence north 4,560.00'; thence west 4,210.00'; thence north 5,170.00'; thence west 2,920.00'; thence north 10,110.00'; thence east 2,930.00'; thence north 37°49' east, 3,585.99'; thence north 1,889.40'; thence west 10,381.69'; thence north 7,369.18'; thence east 9,137.36' to the point of beginning, containing in all 15,595.81 acres, more or less, and all being located in Navajo County, Arizona.

The above description contains all or a part of the following sections as shown on the "Arizona Protraction Diagram No. 35, Bureau of Land Management Area 2, Cadastral Engineering" map dated February 11, 1960:

T. 36 N., R. 18 E.
26, 27, 28, 29, 30, 31, 32, 33, 34, 35

T. 35 N., R. 18 E.
3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18,
20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33,
34, 35

TRACT NO. 2

Beginning at a point, said point being 29,092.64' east of Mile Post 23.5, being the same mile post as described in Tract No. 1, and on the 36°30' north parallel of latitude; thence east along said parallel 24,769.40'; thence south 40,176.84'; thence west 4,769.40'; thence north 4,807.66'; thence west 4,000.00'; thence north 1,754.65'; thence west 6,448.91'; thence south 6,562.31'; thence west 13,551.09'; thence north 4,807.66'; thence west 4,00000'; thence north 4,000.00'; thence east 3,000.00'; thence north 4,000.00'; thence west 3,000.00'; thence north 4,000.00'; thence east 5,200.00'; thence north 4,000.00'; thence north 26°01' west 2,040.21'; thence north 2,350.00'; thence east 4,000.00'; thence north 15, 369.18' to the point of beginning, containing in all 24,404.19 acres more or less, and all being located in Navajo County, Arizona.

The above description contains all or a part of the following sections on the "Arizona Protraction Diagram No. 35, Bureau of Land Management Area 2, Cadastral Engineering" map dated February 11, 1960:

T. 36 N., R. 19 E.
25, 26, 27, 28, 29, 32, 33, 34, 35, 36

T. 35 N., R. 19 E.
1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
28, 29, 30, 31, 32, 33, 34, 35, 36

T. 35 N., R. 18 E.
13, 24, 25, 36

THE HOPI TRIBE
Resolution No. H-12-66

BE IT RESOLVED that Dewey Healing, Chairman of the Hopi Tribal Council, is hereby authorized to enter into a mining lease with Sentry Royalty Company, a Nevada corporation, in accordance with the Drilling and Exploration Permit by and between the Hopi Tribe, the Navajo Tribe and Sentry Royalty Company, dated June 1, 1964, as amended by supplemental agreement dated August 18, 1964; subject to the approval of the tribal attorney as to form of lease and subject also to the approval of the Secretary of the Interior or his authorized agent.

CERTIFICATION

I hereby certify that the foregoing Resolution was regularly adopted by the Hopi Tribal Council on the 16th day of May, 1966, by a vote of 10 in favor and 0 opposed, the Chairman not voting, after full and free discussion on the merits.

/s/ DEWEY HEALING
DEWEY HEALING, Chairman
Hopi Tribal Council

ATTEST:

/s/ DORIS NASEYOWMA
Doris Naseyowma, Acting Secretary
Hopi Tribal Council

APPROVED:

/s/ CLYDE W. PENSONEAU MAY 24, 1966
Clyde W. Pensoneau, Superintendent
Hopi Indian Agency

PERCENTAGE ROYALTY SCHEDULE FOR URANIUM AND OTHER MINERALS ASSOCIATED THEREWITH

Mine Value Per Dry Ton	Royalty Percentage of Mine Value Per Dry Ton
$ 0.01 to $ 10.00 inclusive	12%
10.01 to 20.00 "	13.3%
20.01 to 30.00 "	14.6%
30.01 to 40.00 "	15.9%
40.01 to 50.00 "	17.2%
50.01 to 60.00 "	18.5%
60.01 to 70.00 "	19.8%
70.01 to 80.00 "	21.1%
80.01 to 90.00 "	22.4%
90.01 to 100.00 "	23.7%
100.01 to more	25%

"MINE VALUE PER DRY TON", wherever used herein is hereby defined as the dollar value per dry ton of crude ores at the mine as paid for by the Atomic Energy Commission or other government authorized agency before allowance for transportation and development; however, if the government at any time hereafter does not establish and pay for said ores on a fixed or scheduled dollar value per dry ton of crude ores at the mine, or said ores contain saleable minerals, some, or all, of which are disposed of to a custom treatment plant or smelter for treatment, and sale, then mine value per dry ton shall be the gross value per dry ton of said crude ore as paid for by the Atomic Energy Commission or other government authorized agency mill or other buyer, less any allowances or reimbursements for the following specific items: (1) transportation of ores (2) allowances for exploration for, or

development of ores and (3) treatment or beneficiation of ores; which specific items shall in such event be deducted from the gross sales price received from the metal content of said ores by the seller before said percentage royalty is calculated and paid.

BEST AVAILABLE COPY

5-154 d
Nov. 1955

DOCKET 259 PAGE 410

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

EVIDENCE OF AUTHORITY OF OFFICERS TO EXECUTE PAPERS

(To be sworn to by secretary or president of a corporation and sealed with its seal)

I solemnly swear that E. R. Phelps ~~and~~ ______ ~~were~~ was on the 6th day of June, 19 66, the duly elected, qualified, and acting vice president, ~~and secretary~~, ~~respectively~~, of Sentry Royalty Company ______ a corporation organized under the laws of Nevada on which day ~~they~~ he executed the lease ~~[illegible]~~ for and in behalf of said corporation, covering certain Trust or Restricted Indian lands on the Navajo-Hopi Reservation, in the State of Arizona; that ~~they were~~ he was fully empowered to execute said instrument and all papers in connection therewith, and that ~~their~~ his action in executing the same binds the said corporation to full performance of all obligations thereunder.

[CORPORATE SEAL]

R. J. Mulvaney
Secretary
(Title)

This 6 th day of June, 19 66

Subscribed and sworn to before me this 6th day of June, 19 66

(Signed) Irma D. Onken

[SEAL]

Notary Public
(Title)

My Commission Expires Sept. 3, 1968

275

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*Indicate whether lease, bond, or assignment.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]

CONFIDENTIAL

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AMENDMENTS TO COAL MINING LEASE
No. 14-20-0603-8580
BETWEEN THE NAVAJO TRIBE AND PEABODY COAL COMPANY

WHEREAS, a mining Lease designated No. 14-20-0603-8580 was made and entered into on February 1, 1964, between the Navajo Tribe and Sentry Royalty Company; and

WHEREAS, this Lease was approved by the designated representative of the Secretary of the Interior on August 28, 1964; and

WHEREAS, Peabody Coal Company, a Delaware corporation, has been assigned all of Sentry Royalty Company's right, title and interest in and to the Lease; and

WHEREAS, Peabody Coal Company has entered into and is currently performing under a long term coal supply agreement with the Participants in the Mohave Project who are Southern California Edison Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, and Salt River Project Agricultural Improvement and Power District (hereinafter referred to as "Mohave Participants"), for the sale and purchase of certain coal from the leased premises to the Mohave Project; and

WHEREAS, Peabody Coal Company has also entered into and is currently performing under a long term coal supply agreement with the Co-Owners in the Navajo Generating Station who are Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company, and along with the Bureau of Reclamation of the United States Department of the Interior, are hereinafter referred to as "Navajo Participants", for the sale and purchase of certain coal from the leased premises to the Navajo Generating Station; and

WHEREAS, Peabody Coal Company has, pursuant to a package of amendments to Lease Nos. 14-20-0603-8580 and 14-20-0603-9910, both between Peabody and the Navajo Tribe, proposed to the Navajo Tribe to lease 90 million additional tons of surface mineable coal within the boundaries of the leasehold under Lease No. 14-20-0603-8580, and lease the Navajo Tribe's undivided one-half interest in 180 million additional tons of surface mineable coal within the boundaries of the leasehold under Lease No. 14-20-0603-9910; and

WHEREAS, these amendments to Lease No. 14-20-0603-8580 are a part of such package; and

WHEREAS, Peabody Coal Company, pursuant to amendments to Lease No. 14-20-0450-5743 between Peabody Coal Company and the Hopi Tribe of Indians has proposed to the Hopi Tribe to lease that Tribe's undivided one-half interest in the same 180 million tons of surface mineable coal as are proposed for lease under the amendments to Lease No. 14-20-603-9910; and

WHEREAS, Peabody Coal Company and the Navajo and Mohave Participants expressly acknowledge the importance to members of the Navajo Tribe of the preservation of Navajo lands and the minimization of disruption to the ways of life of Navajos living on or near the areas leased hereunder; and

WHEREAS, the Navajo Tribe expressly acknowledges the importance for members of the Navajo Tribe

of the benefits accruing to the Tribe under this Lease as herein amended and acknowledges further that some disruption to Navajo lands and Navajo tribal members living on or near the areas leased hereunder will be necessary if such benefits are to be realized; and

WHEREAS, in consideration for various additional undertakings of Peabody Coal Company commencing on the effective date of these amendments rather than at the end of the current lease, the Navajo Tribe does hereby agree to amend Lease No. 14-20-0603-8580 to authorize Peabody Coal Company to mine this additional coal rather than executing a separate lease or leases to cover the areas containing this coal, it being understood that the additional 90 million tons will all be mined within the surface area covered by Lease No. 14-29-0603-8580;

NOW, THEREFORE, it is agreed between the Navajo Tribe (hereafter referred to as "Lessor") and Peabody Coal Company (hereafter referred to as "Lessee") that Coal Mining Lease No. 14-20-0604-8580 is hereby amended as follows:

1. *Term and Possession.* At the end of the first paragraph of Article II, p. 2, the following is added:

> In the event the production of coal in paying quantities by Lessee from the premises leased hereunder ceases prior to the cessation of production of coal in paying quantities by Lessee from the premises covered by Lease No. 14-20-0603-9910, Lessor will consent to such applications by Lessee for such surface leases as may be reasonably necessary to ensure that Lessee retains the right for the duration of the term of Lease No. 14-20-0603-9910 to use and occupy as much of the surface of the premises leased

> hereunder as may be needed for the operation of mining facilities including, without limitation, roads, power lines, communication lines, overland conveyors, buildings, equipment, and other facilities, in support of Lease No. 14-20-0603-9910. Such surface leases shall be for a total area not to exceed 2,000 acres and shall provide that Lessee shall pay to Lessor for any land under those surface leases at the rate of Fifty Dollars ($50.00) per acre per year, which payment shall be in lieu of any rentals or advance royalties provided under this Coal Mining Lease as herein amended. Application(s) for such surface leases shall be submitted to Lessor by Lessee no later than nine (9) months prior to the projected cessation of production under this Lease and shall identify with specificity the areas for which surface leases are required. Lessee agrees to complete promptly the reclamation of the remainder of the premises leased hereunder in accordance with applicable law. After completion of such reclamation, this Lease shall be deemed terminated with respect to those portions of the premises leased hereunder which are not subject to executory surface leases.

2. *Additional Coal.* The fourth paragraph of Article II of the Lease is deleted and the following paragraph is put in its place:

> Lessor does hereby lease to Lessee 290 million tons of surface mineable coal in the leased premises comprising the 200 million tons originally leased plus an additional 90 million tons as of the effective date hereof. Such coal shall be mineable by strip, auger, or other generally approved surface mining methods to the extent economically feasible as

> determined by appropriate federal agencies using standards applicable to federal coal. Lessor and Lessee agree that, for purposes of Navajo taxes, if applicable on any of the premises leased hereunder, the value of and expenses attributable to such additional 90 million tons of coal shall not be considered part of the active mining activities of Lessee until the earlier of (a) issuance of any mining permit(s) (conditional, temporary or otherwise) by applicable governmental authority authorizing commencement of mining of any coal in excess of 200 million tons from the leased premises; or (b) January 1, 2005. Until such inclusion in active mining activities, such additional coal and associated expenses shall be deemed, for such tax purposes, as an inactive, non-productive leasehold interest and shall be assessed on the per acre basis established by Lessor for such reserves for the areas of additional coal shown on Exhibit A-1. Lessee agrees that, to the extent possible, Lessee will mine the additional coal granted hereunder in proportion to the amount of additional coal granted under the amendments to Lease No. 14-20-0603-9910, so that with 90 million tons of additional coal on Lease No. 14-20-0603-8580 and 180 million tons of additional coal on Lease 14-20-0603-9910, Lessee would attempt to mine one ton of additional coal from the premises covered by this Lease No. 14-20-0603-8580 for every two tons of additional coal mined from the premises covered by Lease No. 14-20-0603-9910. This mining would be monitored on an annual basis. It is understood that Lessee can adhere to this method of operation so long as it does not have a material and adverse effect on Lessee's ability to meet the coal quality required by the Mohave and Navajo Participants for

those Projects. Lessee shall provide Lessor reasonable access to the records maintained under Article IX hereof for the purpose of monitoring Lessee's compliance with the terms of this Lease, including audits of customer invoices and reasonable access to technical information used for assessment of the coal reserve leased hereunder.

3. *Royalty Rate.* Article IV of the Lease, pp. 4-5, is replaced in its entirety with the following language:

> In consideration of the foregoing, Lessee hereby agrees to pay or cause to be paid to the Secretary of the Interior or his authorized representative for the use and benefit of the Navajo Tribe, royalties for mining under this Lease as follows:

(a) Commencing on the effective date of these amendments, twelve and one-half percent (12.5%) of the monthly gross realization for all coal obtained from the premises leased under this Lease as herein amended, computed based on F.O.B. mines in accordance with the method utilized by the United States Government for computing royalties on federal coal leases, as such method may be revised from time to time; except that, (i) in the event the method utilized by the United States Government for computation of royalties on federal coal leases is modified by the United States Government after May 1, 1987, such modification shall be applicable only to coal sold by Lessee after the law or regulation changing such method comes into force; and (ii) in the event of a modification of the method of calculation of gross realization utilized by the United States Government for federal coal leases, the change (upward or downward) in the amount calculated as gross realization hereunder resulting from such modification shall be limited to an amount not to exceed five percent (5%) of gross realization calculated in accordance with the United States Government method applicable to federal coal leases prior to such modification. The parties hereby agree that for the purposes of this subsection, the current method utilized by Lessee in calculating gross realization under Lease No. 14- 20-0603-8580 as illustrated in Exhibit A-2 which is attached hereto and incorporated herein by reference, shall be deemed to constitute the current method of calculating gross realization utilized by the United States Government for federal coal leases as of May 1, 1987. Exhibit A-2 also contains a formula and example illustrating the application of the five percent (5%) limitation referenced above. Exhibit A-2 shall be revised by Lessor and Lessee as necessary to reflect and account for modifications in the United States Government method of calculating gross realization applicable to federal coal leases.

(b) Ten (10) years from the effective date of these amendments, and at the end of each successive ten (10) year period thereafter for the duration of the Lease term, the coal royalty percentage rate will either stay at twelve and one-half percent (12.5%) of gross realization or move to the minimum percentage rate for royalty applicable to federal coal leases for surface mineable coal, whichever is then greater.

Notwithstanding the foregoing, if either Lessor or Lessee determines it will be dissatisfied with this automatic revision of the royalty rate at the conclusion of such ten (10) year period, the dissatisfied party shall notify the other party of such dissatisfaction no later than nine (9) months prior to the expiration of the applicable ten (10) year period. Promptly after any such notice is given, Lessor and Lessee shall begin good faith negotiations to reach agreement on a royalty rate for the succeeding ten (10) year period. If no agreement on royalty rate is reached within four (4) months of delivery of the notice, the issue of royalty rate may be taken to arbitration under the procedures provided in Article XXXVII herein for determination, consistent with the terms hereof, of an equitable royalty rate, considering the interests of Lessor, Lessee and the Navajo and Mohave Participants. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than twelve and one-half percent (12.5%) of gross realization computed in accordance with this Article, as amended. The parties shall utilize their best efforts to complete the arbitration prior to the expiration of the applicable ten (10) year period and shall direct the arbitrators to conduct the proceedings and render a decision prior to such expiration. Any new adjustment in royalty rate established by arbitration shall be applicable from and after the later of either the date of the arbitration award or the expiration of the applicable ten (10) year period.

(c) Whenever uranium ores are mined and sold by Lessee, royalty shall be paid to Lessor at the rate provided for in the "Percentage Royalty Schedule" set out in Resolution of the Advisory Committee of the Navajo Tribal Council (ASC-37-55) dated September 27, 1955, as amended. In the event that either Lessor or Lessee is at any time dissatisfied with such rate or any adjustment hereunder as an accurate reflection of prevailing economies for uranium under the particular circumstances, Lessor and Lessee shall begin good faith negotiations to reach agreement on an adjusted royalty

rate. If no agreement is reached within six (6) months, the issue will be taken to arbitration under the procedures provided in Article XXXVII herein to establish a rate consistent with such economies. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than the rate provided in the "Percentage Royalty Schedule" referenced above. Whenever minerals other than coal or uranium are mined and sold by Lessee, royalty shall be paid to Lessor at the rate of ten percent (10%) of the gross F.O.B. mine or mill price, whichever is greater. In the event that either Lessor or Lessee is at any time dissatisfied with this royalty rate or any adjustment hereunder as an accurate reflection of prevailing economies for any such mineral under the particular circumstances, Lessor and Lessee shall begin good faith negotiations to reach agreement on an adjusted royalty rate. If no agreement is reached within six (6) months, the issue will be taken to arbitration under the provisions provided in Article XXXVII herein to establish a rate consistent with such economies. However, the decision of the arbitrator and arbitrators in no case will result in a royalty rate of less than the rate provided in the "Percentage Royalty Schedule" reference above. Whenever minerals other than coal or uranium are mined and sold by Lessee, royalty shall be paid to Lessor at the rate of ten percent (10%) of the gross F.O.B. mine or mill price, whichever is greater. In the event that either Lessor or Lessee is at any time dissatisfied with this royalty rate or any adjustment hereunder as an accurate reflection of prevailing economies for any such mineral under the particular circumstances, Lessor and Lessee shall begin good faith negotiations to reach agreement on an adjusted royalty rate. If no agreement is reached within six (6) months, the issue will be taken to arbitration under the provisions provided in Article XXXVII herein to establish a rate consistent with such economies. However, the decision of the arbitrator or arbitrators in no case will result in a royalty rate of less than ten percent (10%) rate specified above.

(d) Except for those processes associated with the crushing of quarry stone to aggregate for road maintenance purposes or other public uses, the right to extract non-coal minerals granted in this Article does not grant approval for any on-site milling operations. Specifically, the Lessor prohibits all uranium or gold/silver milling on the Lease areas or operations located adjacent to the Lease area.

(e) All royalties accruing for any month shall be due and payable on or before the 15th of the succeeding month, by electronic transfer.

(f) No coal or other minerals mined hereunder shall be sold to any affiliate or subsidiary of Lessee with the effect of reducing monthly gross realization.

(g) If, during the period January 1 through March 31 of any calendar year following the effective date of these amendments, royalties payable by Lessee to Lessor for coal obtained from the premises leased hereunder for such periods are less than One Million Dollars ($1,000,000), Lessee shall pay Lessor on or before April 15 the sum equal to the difference between such royalties payable for such period and One Million Dollars ($1,000,000). Such differential sum so paid shall be considered advance royalty and shall constitute a fund against which any royalty for coal obtained from the leased premises during such calendar year shall first be credited or charged so that royalty on coal production occurring through December 31 of the year of such payment shall not be due and payable at any time except to the extent that royalty on coal production during such calendar year exceeds the amount of such differential payment. Nothing in this subsection shall be construed as a waiver of Lessor's rights and remedies in the event Lessee ceases production of coal in paying quantities from the leased premises.

4. *Adjusted Royalty Payment.* Article VI, entitled Termination of Federal Jurisdiction, p. 7-8, is deleted from the Lease and the following is substituted:

VI. *Adjusted Royalty Payment*

Lessor and Lessee recognize that a dispute has arisen between them with regard to the validity and reasonableness of the royalty adjustment decision of the Bureau of Indian Affairs Navajo Area Director dated June 18, 1984, which decision was purported to be made pursuant to Article VI of the original terms of this Lease No. 14-20-0603-8580. Such decision is currently on appeal by Lessee before the Assistant Secretary of the Interior for Indian Affairs.

(a) In consideration of the benefits associated with these lease amendments, as well as those associated with amendments to Lease No. 14-20-0603-9910, Lessor and Lessee hereby jointly move that the royalty adjustment decision of the BIA Navajo Area Director dated June 18, 1984, pertaining to this Lease be vacated and declared to be of no force or effect and, by approving these lease amendments, the Secretary of the Interior does hereby vacate that royalty adjustment decision and render that royalty adjustment decision to be without legal force or effect.

(b) Upon the approval of these amendments by the Secretary of the Interior, the provisions of Article IV and VI of these lease amendments shall be the sole exclusive method for the determination or readjustment of royalty rates under Lease No. 14-20-0603-8580 for periods beginning on and after February 1, 1984.

(c) For all coal obtained from the premises leased under this Lease during the period February 1, 1984, until the effective date of these amendments, Lessee shall pay Lessor twelve and one-half percent (12.5%) of the gross realization received by Lessee for such coal, with gross realization computed in accordance with the method utilized at the time the coal was sold for computing royalties on federal coal leases. The payment under this subparagraph (c) shall be due and payable within ten (10) calendar days of the effective date of these amendments. For purposes of Article XXXV herein such payments shall be allocated so that payment shall be deemed to be made in the year in which the coal was sold.

(d) For the payments described in subparagraph (c) above and other good and valuable consideration contained in this Lease as herein amended, Lessor agrees not to assert any claim or other demand for any amounts as past due royalty under this Lease for the period February 1, 1984, to the effective date of these lease amendments or interest thereon, except that nothing in this provision shall relieve Lessee from the obligation to pay any additional amounts determined to be due to Lessor under subparagraph (c) above after audit or review of Lessee's production and/or royalty data.

5. *Assignment of Lease.* Article XI of the Lease, p. 11-12, is replaced in its entirety with the following language:

> Lessor recognizes that Lessee has granted the Navajo Participants and the Mohave Participants certain existing rights to conditional partial assignments of Lease No. 14-20-0603-8580 and first rights of refusal to purchase Lessee's interest in the mining operation thereunder. Lessee further shall have the right by notice to Lessor but without further consent of Lessor or the Secretary of the Interior to assign, transfer or sublease its interest hereunder to the Mohave Participants or the Navajo Participants or any one of them or Peabody Holding Company, Inc., or a subsidiary or affiliate in which Peabody Holding Company, Inc. or Peabody Coal Company has a greater than fifty percent (50%) interest, provided Lessee remains a guarantor of the performance of any such subsidiary or affiliate assignee. However, subject to those rights, Lessee shall not assign this Lease or any interest therein by an operating agreement or otherwise, or sublet any portion of the leased premises, without the written approval of the Lessor and the Secretary of the Interior and, in the event the Navajo Participants and the Mohave Participants elect not to exercise their first right of refusal, to acquire Lessee's interest herein, as provided in their respective Coal Supply Agreements with Lessee, the Navajo Tribe shall have the next first right of refusal to any bona fide offer acceptable to Lessee from a third party to purchase Lessee's interest in the mining operation, including all mining equipment and facilities located thereon at the same price and on the same terms

offered. Lessee shall give written notice to Lessor of any such bona fide offer which Lessee desires to accept as promptly as possible following receipt of notice from the Navajo Participants and the Mohave Participants expressly declining to exercise their rights of first refusal or following expiration of the time period in which the Navajo Participants and the Mohave Participants were required to exercise their rights of first refusal whichever occurs first. Lessor shall notify Lessee in writing within one hundred eighty (180) days of the receipt of such notice of its decision on the exercise of such right of refusal. In the event Lessor fails to notify Lessee in writing within said one hundred eighty (180) day period, or in the event Lessor expressly declines to exercise such right of refusal, Lessee shall be free to accept such offer from a third party. Any purchase and sale of Lessee's interest in the mining operation hereunder shall be subject to the obligations herein and except as provided herein any required approvals from governmental authorities. In the event Lessor exercises its right of refusal herein granted, the parties shall by mutual consent determine the various details pertaining to such purchase. Any disagreement relating to any details of the purchase herein provided for shall be subject to arbitration in accordance with the provisions of Article XXXVII herein.

Lessor acknowledges that such transfers by Lessee of its interest herein as are authorized hereunder to be completed without Lessor consent are not subject to Lessor disapproval under terms of the Navajo Tribal Code, applicable to transfers of such interests. For any processing of such transfers,

Lessor may charge Lessee a fee which shall not exceed One Hundred Thousand Dollars ($100,000) and which shall be in lieu of any other charges or fees charged by Lessor in connection with the processing of such transfers. Both Lessor and Lessee acknowledge that, in the event of a transfer of Lessee's interest, in whole or in part, to the Navajo or Mohave Participants, or any one of them, Lessor and the Mohave and Navajo Participants agree that for the purposes of determining royalties and Navajo taxes (to the extent relevant to tax assessments or computations), the gross mine price per ton shall be that price which the respective assignee would have paid to Peabody for coal pursuant to their respective Coal Supply Agreements which were in effect at the time of the assignment. The mine price per ton will be adjusted thereafter, pursuant to the provisions of the Coal Supply Agreements, as though those agreements were still in effect and no assignment had taken place. In the event that any such assignee enters into an agreement with a third party for the mining of the coal leased hereunder and the consideration paid such third party on a per ton basis for such mining exceeds the per ton price which would have been paid Peabody pursuant to such respective Coal Supply Agreements, the percentage royalty rate applicable hereunder shall be applied to the consideration paid under such new supply agreement.

In the event of such assignment to the Navajo or Mohave Participants or any one of them, the mine price per ton will be adjusted either pursuant to the provisions of the existing Coal Supply Agreement(s) as though those agreements were still in effect and no assignment had taken place, or on the basis of a new supply agreement, whichever is determined by Lessor to be most beneficial.

6. A New Article XXXI shall be added to the lease as follows:

XXXI. *Scholarships*

Within Thirty (30) days of the effective date of these amendments, Lessor shall establish a fund to be administered by the Navajo Tribe to provide educational opportunities for members of the Navajo Tribe and Lessee shall contribute annually to such fund. The initial contribution shall be One Hundred Thousand Dollars ($100,000) and shall be made within thirty (30) days after the effective date of these amendments. The amount of this contribution shall be increased by Two Thousand Dollars ($2,000) per year for the next twelve 12 years and shall thereafter remain at One Hundred and Twenty-Four Thousand Dollars $124,000 per year annually for the remainder of the term of this Lease as amended. Such contributions are to be made on the date in each year no later than thirty (30) days after the anniversary of the effective date.

7. A new Article XXXII shall be added to the lease as follows:

XXXII. *Effective Date of Amendments*

These amendments shall take effect upon the approval by the Secretary of the Interior (without delegation) of the package of amendments to Lease Nos. 14-20-0603-8580 and 14-20-0603-9910 between Lessee and Lessor of which package these amendments are a part, and like approval of the amendments to Lease No. 14-20-0450-5743 between Lessee and the Hopi Tribe, whichever approval occurs later. If these necessary Secretarial approvals are not obtained within ninety (90) days of the resolution adopted by the Navajo Tribal Council approving the amendment package, either Lessor or Lessee may at its option rescind its agreement to the amendment package by written notice to the other.

8. A new Article XXXIII shall be added as follows:

XXXIII. *Bonus Payments*

In consideration of these amendments, Lessee hereby agrees to pay or cause to be paid to the Secretary of the Interior of his authorized representative for the use and benefit of the Navajo Tribe, bonuses as follows:

(a) One and One-Half Million Dollars ($1,500,000) due and payable upon the effective date of these lease amendments.

(b) One Million Dollars ($1,000,000) payable upon completion of the first coal royalty reopener process pursuant to Article IV, as herein amended, scheduled ten (10) years from the effective date of these amendments. "Completion of the first coal royalty reopener process" shall be understood to mean (i) automatic adjustment pursuant to Article IV(b), as herein amended, or, if the royalty rate is not adjusted automatically, (ii) the execution of a binding agreement between the parties on a royalty rate for the succeeding ten (10) year period, or (iii) the rendering of an arbitration decision within the arbitration process with regard to such royalty rate pursuant to Articles IV and

XXXVII herein, without regard to any judicial review of that decision. Nothing contained herein shall be construed to require a bonus payment at the completion of any coal royalty reopener process other than the first.

(c) Seven and One-Half Million Dollars ($7,500,000) payable at such time as Lessee commences mining of the additional coal granted under these lease amendments. In the event such mining of the additional coal does not commence by December 31, 2004, the amount of this bonus payment shall be escalated to reflect changes in the Consumer Price Index during the period January 1, 2005, until mining of the additional coal commences when payment of the bonus, as escalated, is due. For the purposes of this Subsection (c), mining of the additional coal shall not be deemed to have commenced until such time as Lessee has mined a total of 200 million tons from within the premises under this coal mining Lease No. 14-20-0603-8580 and Lessee proceeds to mine coal in excess of the 200 million tons from within those premises.

9. A new Article XXXIV shall be added as follows:

XXXIV. *Tribal Taxation*

(a) By approval of the Lease amendments adding this Article XXXIV, Lessor, through its Tribal Council, acting in its government and proprietary capacities, expressly confirms the validity of Sections 7(e) and 7(f) of the Indenture of Lease for Navajo Units

1, 2 and 3 (the "Navajo Lease") and Advisory Committee Resolution No. ASC-126-81 relating to such Navajo Lease provisions. Lessor agrees that, in the event it is alleged that Lessor or its subordinate agencies or units have acted in contravention of Navajo Lease Sections 7(e) and 7(f), Lessor and its subordinate agencies and units consent to be sued by Lessee, the Navajo Participants, individually or collectively, or the Black Mesa and Lake Powell Railroad in the United States District Court for the District of Arizona for the limited purpose of securing a declaration of the parties' rights under Section 7(e) and 7(f) of the Navajo Lease and injunctive relief as may be necessary to enforce those referenced provisions of the Navajo Lease. Lessor and its subordinate agencies and units further agree they will not raise sovereign immunity or failure to exhaust administrative or tribal remedies as defenses to any such declaratory or injunctive actions by Lessee, the Navajo Participants, or the Black Mesa and Lake Powell Railroad. During the pendency of any good faith challenge to such claim, neither Lessee, the Navajo Participants, nor the Black Mesa and Lake Powell Railroad shall be required to make payment of any amounts claimed due by the Navajo Tribe or its subordinate agencies or units in alleged violation of Navajo Lease Sections 7(e) and 7(f), except that if Lessee, the Navajo Participants, or the Black Mesa and Lake Powell Railroad decide to appeal an adverse decision of a challenge, such appealing party shall, within (30) days of such adverse decision, post a bond in favor of Lessor with an established financial institution reasonably acceptable to Lessor in an amount equal to the amount determined by an appealable judgment of the United States District Court or the decision of the Secretary of the Interior to be owing by such bonding party to Lessor, each such bond to remain in force until the earlier of (i) a determination by a federal appellate court that the district Court's or Secretary's ruling as to the fact of the bonding party's liability to Lessor was erroneous; or (ii) payment to Lessor of the amounts claimed by Lessor. Nothing in this subparagraph (a) shall be interpreted as a consent to suit by the Navajo Tribe or its subordinate agencies or units to any challenge to the fact or amount of a Navajo tribe tax or other levy not alleged to be in violation of Navajo Lease Sections 7(e) and 7(f) except in accordance with the procedures specified under Navajo tribal law and by the Navajo Tax Commission.

(b) Except as provided in the Navajo Lease, in the Section 323 grants, and in Articles XXXIV and XXXV hereof, Lessee expressly acknowledges: (i) the right and authority of the Navajo Tribe to levy the Possessory Interest Tax and the Business Activity Tax on Lessee, as permitted by law, on the Lease Interests and Activities as defined in Article XXXV herein within the Navajo Reservation, excepting those areas designated as the Navajo Partitioned Lands of the Former Joint Use Area; and (ii) the right and authority of the Navajo Tribe to levy the Business Activity Tax on Lessee, as permitted by law, on the activities taking place on the surface areas within the Navajo Reservation designated as the Navajo Partitioned Lands of the Former Joint Use Area. These acknowledgments are based on the Navajo Tribe's ownership and control of surface and subsurface rights or other rights in the area described in subsection (i) hereof, and on the Navajo Tribe's ownership and control of surface rights in the area described in subsection (ii) hereof, and its exercise of territorial governance over both such areas.

These acknowledgments shall not be construed as recognition by Lessor or Lessee of any subsurface rights or other rights which the Hopi Tribe may have or assert in the Navajo Partitioned Lands of the Former Joint Use Area. Within thirty (30) calendar days of the effective date of these Lease amendments and consistently with the exceptions to the acknowledgments in the first section of this subsection (b), Lessee shall file tax returns and pay all Business Activity Tax and interest thereon for periods commencing on or after January 1, 1985, due from Lessee under Navajo tribal law based on the Lease Interest and Activities as defined in Article XXXV herein within the Navajo Partitioned Lands of the Former Joint Use Area. Provided such payment is made within such thirty (30) day period, Lessee shall not be obligated to pay penalties for non-payment of or non-filing of returns for such Business Activity Tax for the period from January 1, 1985 through the effective date hereof. Nothing in this article shall be construed as a waiver by Lessee, the Navajo Participants, or the Mohave Participants of the rights granted under this Article XXXIV or any other right to challenge the amount of the Business Activity Tax, or other fee, charge, assessment or similar exaction association therewith (or penalties or interest thereon) levied by the Navajo Tribe or its subordinate agencies or units.

(c) Lessor and its subordinate agencies and units consent to be sued by Lessee in the United States District Court for the District of Arizona for the limited purpose of securing such declaratory relief as may be necessary to ascertain Lessor's rights and authority to impose taxes, fees, or other charges other than the Business Activity Tax on the Lease Interests and

Activities as defined in Article XXXV herein in and on those areas designated as Navajo Partitioned Lands in the Former Joint Use Area. Lessor and its subordinate agencies and units further agree not to raise sovereign immunity or failure to exhaust administrative or tribal remedies as defenses to any such action by Lessee. Payment of prospective taxes due from Lessee to Lessor under Navajo tribal law, other than the Business Activity Tax, for Lease Interests and Activities within the Navajo Partitioned Lands of the Former Joint Use Area may be deferred by Lessee pending the entry of final judgment in the action for declaratory relief contemplated by this Article XXXIV(c), provided Lessee initiates such action within one hundred and eighty (180) days of the effective date of these Lease amendments; and provided further, within thirty (30) days of the effective date of these Lease amendments, Lessee arranges for and maintains a bond in favor of Lessor with an established financial institution reasonably acceptable to Lessor in an amount equal to the taxes (plus interest thereon as provided by Navajo tribal law) for which payment is deferred under this Article XXXIV(c). The amount of such bond shall be increased no less frequently than once every six (6) months after its establishment to reflect the balance of deferred taxes and interest at the end of each such six (6) month period, and the bond shall remain in effect until the earlier of (i) entry of a final judgment in such declaratory relief action declaring that none of the deferred taxes or interest thereon are due and owing to Lessor; or (ii) payment of such deferred taxes and interest to Lessor. Lessor may claim against such bond if payment of deferred taxes and interest is not made to Lessor within thirty (30) days of final judgment. Lessee shall be not be liable for nor be required to make payment of any penalties or fees assessed for nonpayment or failure to file (except interest) in relation to such deferred taxes which may otherwise by applicable to the period from execution of these lease amendments until the final unappealable decision by the Federal Courts.

(d) The parties agree that in exchange for all benefits associated with these lease amendments and any amendments to Lease No. 14-20-0603-9910, Lessee, Black Mesa Pipeline, Inc., the Black Mesa and Lake Powell Railroad, and the Navajo and Mohave Participants are not liable for and will not be assessed for any taxes, assessments, fees, penalties, interest thereon, or similar exactions or charges of the Navajo Tribe, its subordinate agencies or units, regardless of when assessed, relating to or based upon any ownership, operations or leasehold or other interest of Lessee, Black Mesa Pipeline, Inc., the Black Mesa and Lake Powell Railroad, or the Navajo and Mohave Participants during periods prior to January 1, 1985. Lessee and Black Mesa Pipeline, Inc. shall not be liable for and will not be assessed or be required to make payment of penalties or fees for nonpayment or failure to file which may otherwise be applicable to the Possessory Interest Tax or the Business Activity Tax for the period from January 1, 1985 through the effective date of these Lease amendments, provided Lessee makes the Business Activity Tax payment required under Section XXXIV(b) herein. Until the effective date of these lease amendments or their rescission by either party pursuant to Article XXXII of these amendments, whichever occurs first, Lessor agrees to stay any requirement of payment, enforcement actions, subpoenas, liens, accrual of interest or penalties, and the running of any time limits for the filing of any appeal or request for relief or other ruling with regard to any taxes, assessments, fees, penalties, interest thereon, or similar exactions or charges of the Navajo tribe or its subordinate agencies or units, regardless of when accessed, relating to or based upon any ownership, operation, or leasehold or other interest of Lessee, Black Mesa Pipeline, Inc., or the Black Mesa and Lake Powell Railroad, or the Navajo and Mohave Participants for tax periods prior to January 1, 1985.

10. A new Article XXXV shall be added as follows:

XXV. *Royalty-Tax Cap*

Lessor hereby covenants that, for any calendar year after 1984, the combined total collected, assessed, charged or otherwise sought to be collected by Lessor for the Royalty-Tax Cap Elements listed below shall not exceed twenty and one-half percent (20.5%) of the gross realization received by Lessee for coal from the leased premises during such calendar year from the purchaser of such coal in a bona fide arms length transaction. The twenty and one-half percent (20.5%) rate will be applied to gross realization on a per purchaser basis and not on a cumulative basis so that the total of Royalty-Tax Cap Elements related to coal purchased by a given buyer from the leased premises shall not exceed an amount equal to the gross realization received by Lessee from that buyer for such coal (computed in accordance with the method set forth in Article IV and Exhibit A-2 herein) multiplied by the percentage rate of the Royalty-Tax Cap, as set forth in Exhibit A-3. The Royalty-Tax Cap Elements shall consist of the following:

(a) Coal royalty payable by Lessee to Lessor pursuant to Article III of these amendments for the applicable calendar year as the result of the specific transaction for the sale and purchase of such coal; plus

(b) The total of all taxes, assessments, fees, or similar exactions or charges of the Navajo Tribe, its subordinate agencies and units, for the applicable calendar year, regardless of when assessed, relating to or based upon any ownership, operations or leasehold interest of Lessee, Black Mesa Pipeline, Inc., or other coal transporter, directly or indirectly associated with the specific transaction for the sale and purchase of such coal including, without limitation: the sale or delivery of such coal by Lessee and coal transporters, the severance or extraction of such coal by Lessee, this Lease as it relates to such coal or lands overlying it, the severance, extraction, diversion, or utilization of water from the leased premises by Lessee, Black Mesa Pipeline, Inc., or other coal transporter, in the mining or transportation of such coal, the property of Lessee, Black Mesa Pipeline, Inc., or other coal transporter located on lands leased hereunder and on other lands of the Navajo Tribe to the extent used to supply such coal to the coal purchaser, or rights-of-way granted by Lessor to Lessee, Black Mesa Pipeline, Inc., or other coal transporter to the extent used to supply such coal to the coal purchaser, any improvements or property located thereon, any slurry line, railroad, and related facilities used in the transportation of such coal, or the transportation of such coal (collectively referred to as "the Lease Interests and Activities"). Nothing contained in subparagraph (b) shall be construed to include within its scope any of the following:

(1) Water rates payable to Lessor under the amendments to Lease No. 14-20-0603-9910 or under any other lease or contract with the Navajo and/or Hopi Tribes;

(2) Royalties for uranium and other minerals payable to Lessor under Article IV of this Lease, as amended;

(3) Annual right of way or rent amounts payable hereunder or under separate agreement with Lessor, Black Mesa Pipeline, Inc. or other coal transporter;

(4) Bonuses payable to Lessor under Article XXXIII;

(5) Scholarship amounts payable under Article XXXI;

(6) Penalties, fines or interest thereon assessed by Lessor against Lessee, Black Mesa Pipeline, Inc., or other coal transporter for failure to comply with the terms of this Lease or other agreement(s) with Lessor, or with applicable laws or regulations;

(7) Taxes, fees, or assessments against Lessee, Black Mesa Pipeline, Inc. or other coal transporter for interests or activities not included in the Lease Interests and Activities.

(c) The royalties collectible hereunder are reduced to the extent, in any year, any amounts which would otherwise be collectible by the Navajo Tribe, its subordinate agencies and units, under the Royalty-Tax Cap elements described in subsections (a) and (b) above, are in excess of the percentage or gross realization herein provided, and collection of such amounts shall not be sought by the Navajo Tribe, its subordinate agencies and units. The excess amounts shall be credited to Lessee by deducting such amounts from the royalty amounts otherwise due to Lessor beginning with the monthly royalty payment made by Lessee after Lessee's payment in full of all taxes, assessments, fees and other similar exactions or charges for the applicable calendar year as assessed by Lessor or, where applicable, as finally adjudicated through available and proper administrative and judicial tribunals. However, in the event that such deductions from royalty amounts would reduce royalty to zero or to any level deemed unacceptable under federal requirements for production in paying quantities, such excess amounts shall be deducted from tax amounts otherwise due Lessor, its subordinate agencies or units, to the extent necessary to maintain the applicable Royalty-Tax Cap percentage while providing a level of royalty necessary under federal requirements for production in paying quantities. Nothing in this Article XXXV shall be construed as relieving or imposing additional obligations on Lessee, Black Mesa Pipeline, Inc., other coal transporters or any of the Navajo or Mohave Participants with regard to filing tax returns or providing to Lessor other information otherwise required under applicable Navajo tribal law. Lessee agrees to provide reasonable cooperation to Lessor, its subordinate agencies and units, in calculating deduction(s) credited to Lessee hereunder and reflecting such deductions(s) in the records of the Navajo Department of Natural Resources and the Navajo Tax Commission.

(4) Notwithstanding the foregoing, in the event (i) it is established by judicial decision binding on the

State of Arizona (the "State") or a valid act of the United State Congress or the State Legislature that the State is without authority to, or will not levy any or all State taxes against the property, interest or activities of Lessee, Black Mesa Pipeline, Inc. or other coal transporter described in Article XXXV(b) and the effect of such decision or act is to reduce taxes paid by Lessee, Black Mesa Pipeline, Inc. or other coal transporter to the State, and (ii) Lessor assesses taxes or similar exactions as substitute or replacement therefor, there shall be deducted from the Royalty-Tax Cap amount, which is calculated by adding the Royalty-Tax Cap Elements under articles XXXV(a) and (b), an amount equal to the lesser of eighty percent (80%) of such terminated State taxes otherwise assessable against Lessee, Black Mesa Pipeline, Inc. or other coal transporter, or eighty percent (80%) of the amount of such substitute or replacement taxes or exactions to be paid by Lessee, the Navajo Participants, Black Mesa Pipeline, Inc. or other coal transporter.

(e) Nine (9) months prior to the ten (10) year anniversary of the effective date of these amendments, and nine (9) months prior to each successive ten (10) year anniversary thereafter for the duration of the Lease term, the percentage rate of the Royalty-Tax Cap stated herein may reopen and Lessor and Lessee shall begin good faith negotiations to reach agreement on a percentage rate for the Royalty-Tax Cap for the succeeding ten (10) year period. If no agreement is reached within four (4) months, the issue of the percentage rate of the Royalty-Tax Cap may be taken to arbitration under the procedures provided in Article XXXVII herein for determination, consistent with the terms hereof, of an equitable percentage rate for the

Royalty-Tax Cap, considering the interests of Lessor, Lessee and the Navajo and Mohave Participants. The parties shall utilize their best efforts to complete the arbitration prior to the applicable ten (10) year anniversary date and shall direct the arbitrators to conduct the proceedings and render a decision prior to such anniversary date. However, the decision of the arbitrator or arbitrators in no case will result in a percentage rate for the Royalty-Tax Cap of less than twenty and one-half percent (20.5%) of gross realization. Any adjustment of the Royalty-Tax Cap as a result of arbitration shall be applicable from and after the later of either the date of the arbitration award or the applicable ten (10) year anniversary date.

In the event the parties fail to reach a negotiated agreement and elect to arbitrate both royalty rates and the Royalty-Tax Cap for a specific ten (10) year reopener under Article IV and XXXV, both such arbitrations shall be conducted as a single proceeding in accordance with the procedures set forth in Article XXXVII.

11. A new Article XXXVI shall be added as follows:

XXXVI. *Rights-of-Way*

Lessee may make application to Lessor for a permit or grant of any right-of-way reasonably related to Lessee's operations and located within the area designated on Exhibit A-4 attached hereto. Lessor will not unreasonable withhold its consent to any such right-of-way. Compensation to Lessor for such rights-of-way shall be negotiated between Lessor and Lessee, and the grant or permit of any right-of-way shall be in accordance with all provisions of applicable law, including federal and Navajo tribal law and regulations.

The Participants in the Navajo and Mohave Projects may from time to time apply for a permit or grant of rights-of-way to construct and operate facilities over, across or beneath Navajo Reservation lands not already under lease to such Participant or Participants. Lessor will grant approval of such permits or grants of right-of-way if Lessor, in its sole discretion, determines that such permits or rights-of-way should be granted, subject only to (i) review and approval in an expeditious manner of facility site or route selection by the appropriate tribal agency, and (ii) payment of a feed for said permit or grant or grant of right-of-way in accordance with the formulas established in Exhibit A-5 attached hereto.

12. A new article XXXVII shall be added as follows:

XXXVII. *Arbitration*

Whenever under the provisions of this Lease, as amended, arbitration is required to take place, it shall take place under the following procedures.

Unless, within thirty (30) days of the date arbitration is required to commence, the parties agree upon the appointment of a single arbitrator, a panel of arbitrators consisting of three (3) members shall be appointed as follows.

Within ten (10) working days from the end of the thirty (30) day period, one member shall be appointed by Lessor and one member shall be appointed by Lessee. The third member shall be selected by agreement of the other two members. In the event the two members cannot agree upon the third arbitrator within fifteen (15) working days from the end of the ten (10) day period, the third arbitrator shall be chosen by the Chief Judge of the United States District Court for

the District of Arizona or by the Regional Vice-President of the American Arbitration Association for Arizona, if the Chief Judge is unable or unwilling to select an arbitrator.

Expenses of arbitration shall be shared equally by Lessor and by Lessee. Meetings of the arbitrators may be in person or, in appropriate circumstances, by telephone. All decisions of the arbitration panel shall be by majority vote of the panel, shall be in writing and, together with any dissenting opinions, shall be delivered to Lessor and to Lessee. All decisions shall be made within four (4) months of the appointment of the arbitrator or arbitration panel, unless Lessor and Lessee agree on a longer period in writing.

The arbitrator or arbitration panel shall have power to administer oaths to witnesses, to take evidence under oath, and, by majority vote, to issue subpoenas to compel the attendance of employees and members of Lessor's tribe or employees of Lessee's company or for the production of books, records, documents and other relevant evidence by Lessor and Lessee.

The arbitrator or arbitration panel shall hold hearings in proceedings before it and shall give reasonable advance notice to Lessor and Lessee by registered mail not less than five (5) working days before any hearing. Appearance at a hearing waives such notice. Unless otherwise agreed by Lessor and Lessee, all hearings shall be held in Phoenix, Arizona, and, where evidence is taken, held on the record. The arbitrator or arbitration panel may hear and determine the controversy only upon evidence produced before it and may determine the controversy notwithstanding the failure of either Lessor and Lessee duly notified to appear. The Lessor and Lessee is each entitled to be heard at all hearings, to present evidence material to the matter subject to arbitration, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at its own expense. A transcript shall be kept of all proceedings before the arbitrator or arbitration panel. Except as necessary for the enforcement or appeal of the arbitration decision, the parties and arbitrator or arbitration panel shall maintain the confidentiality of any such transcript.

The decision of the arbitrator or arbitration panel shall be limited to establishing the mineral royalty rates or royalty-tax cap rates or resolving disputes arising under Article XI, shall be presumed to be valid, and may be vacated only by the United States District Court for the District of Arizona on one of the following grounds: (a) the decision was procured by corruption, fraud or undue means; (b) there was evidence partiality or corruption by the arbitrator, arbitration panel or by any member; (c) the arbitrator, arbitration panel, or any member was guilty of misconduct in refusing to hear the question or in refusing to hear evidence pertinent and material to the question, or any other clear misbehavior by which the rights of either party have been substantially prejudiced; (d) the arbitrator, arbitration panel, or any member exceeded their authority under the terms of this Lease as amended; or (e) the arbitrator or arbitration panel's decision is contrary to law. Lessor and its officers acting in their official capacity consent to suit in the United States District Court for the District of Arizona for the limited purpose of the enforcement or appeal of any arbitration decision pursuant to this Article, and agree no to raise sovereign immunity or exhaustion of tribal remedies as a defense to such a suit. Arbitration awards shall be effective on the date of the arbitration decision. Sums due shall accrue interest from the date of the arbitration award at the prime rate then charged by the Bank of America or its successor.

13. A new Article XXXVIII shall be added as follows:

XXXVIII. *Third Party Beneficiaries*

The Navajo Participants and the Mohave Participants, their successors and assigns, are intended third party beneficiaries of those provisions of Article XI, XXXIV, and XXXVI herein which grant rights to such Participants for the sole and limited purpose of preserving and enforcing those rights in administrative proceedings or judicial proceedings for declaratory and injunctive relief in the event of an alleged breach by Lessor of the terms hereof. Except as set forth above, nothing in this Lease shall be construed as granting the Navajo Participants or Mohave Participants, or any one of them, any rights of approval to changes in this Lease, right to participate as a party to litigation of dispute or arbitration under this Lease or any other right hereunder.

14. A New Article XXXXIX shall be added as follows:

XXXIX. *Validity of Amended Leases*

Lessor and Lessee recognize Lease No. 14-20-0603-8580, as herein amended, to be valid and enforceable and in the best interests of Lessee and Lessor and its people. Lessor and Lessee hereby reaffirm their prior contractual commitments to provide for the compensation of individual Navajo tribal members for damages to improvements and customary use rights in areas affected by mining operations authorized hereunder. However, subject to the requirement that Lessee meet its existing contractual obligations for such compensation, Lessor shall not, in either its governmental or proprietary capacity, take any action which would empower such tribal members, by virtue of their ownership of improvements or customary use rights, to prevent Lessee from exercising its rights granted under this Lease as herein amended.

15. A new Article XL shall be added as follows:

XL. *Lease to Continue in Effect Except as Expressly Modified*

Except as expressly modified by these amendments, the original Lease and all its provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these lease amendments to be signed by their duly authorized officers on the dates written below.

THE NAVAJOR TRIBE, Lessor

11/20/87 By [Illegible]
Date Peter MacDonald, Chairman
The Navajo Tribal Council

PEABODY COAL COMPANY, Lessee

11/20/87 By /s/ Kenneth R. Moore
Date Vice President

Attest:

[Illegible]
Assistant Secretary

ACKNOWLEDGMENT OF LESSOR

State of Arizona)
)ss.
County of Maricopa)

Before me, a Notary Public, on this 20th day of November, 1987, personally appeared PETER MACDONALD, to me known to be the identical person who executed the within and foregoing lease amendments and acknowledged to me that he executed the same in his official capacity as Chairman of the Navajo Tribal Council for and on behalf of the Navajo Tribe of Indians as its free and voluntary act and deed for the uses and purposes therein set forth.

/s/ Carolyn Ann Jagger
Notary Public

My commission expires:
My Commission Expires May 31st, 1990.

ACKNOWLEDGMENT OF LESSEE

State of Arizona)
)ss.
County of Maricopa)

On this 20th day of November, 1987 before me appeared Kenneth R. Moore and Gregory J. Leisse, to me personally known, who being by me duly sworn, did say that they are Vice President and Assistant Secretary of Peabody Coal Company, and that the seal affixed to the foregoing instrument is the corporation seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Kenneth R. Moore and Gregory J. Leisse acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal the day and year first above written.

/s/ Carolyn Ann Jagger
Notary Public

My Commission expires:
My Commission Expires May 31st, 1990.

LIST OF EXHIBITS

Lease No. 14-20-0603-8580

Amendments

A-1	Map of additional coal mining areas
A-2	Method of calculating gross realization and 5% limiter
A-3	Method of calculating Royalty -Tax Cap
A-4	Map of Peabody right-of-way area
A-5	Participants' right-of-way formula

ADDITIONAL RESERVE AREAS

Mining Area		Surface Acres
J-2		344.0
J-4		207.0
J-5		139.0
J-6		181.0
J-7 (Remainder)		251.0
J-8		264.0
J-9		309.0
J-10		236.0
J-13		90.0
J-14		454.0
J-15		490.0
J-23		3534.0
J-28		514.0
N-9		1610.0
N-14 West		108.0
	TOTAL	8731.0

ROYALTY CALCULATION

I. CURRENT METHOD

The current method utilized by Lessee for computing royalties and gross realization for this lease is based on the U. S. Government's method applicable to federal coal leases as of May 1, 1987 and is as follows:

	per contract ton[1]
Lessee's revenues on tons sold to one purchaser F.O.B. mine	$13.134
SMCRA fees[2]	.356
Black Lung taxes	.550
Indian taxes (where applicable)	.746
Royalties[3]	2.188
Arizona taxes (including preparer's credit)	.526
Gross Realization[4][5]	$ 17.500

NOTES:

(1) Contract tons at a fixed 10.74% moisture content are the basis for the per ton prices used in Lessee's invoices.

(2) SMCRA fees of $.35 per ton are paid on "scale tons"; i.e., tons at actual moisture content when the coal is weighed (usually about 12%). These fees are slightly higher than $.35 on a per contract ton basis.

(3) For the illustrative purposes of this Exhibit, a royalty rate of 12.5% is used which reflects the initial royalty rate to be paid to the Navajo Tribe under the amendments to Lease No. 14-20-0603-8580 and also reflects the combined total of the 6.25% initial royalty rate to be paid to the Navajo Tribe under the amendments to Lease No. 14- 20-0603-9910 and the 6.25% initial royalty rate to be paid to the Hopi Tribe under the amendments to Lease No. 14-20-0450-5743.

(4) Gross Realization does not include transportation, but does include take or pay and is computed based on F.O.B. mines. Inclusion of extraordinary force majeure type payments to be determined through resolution of pending audit exceptions.

(5) Gross Realization normally varies from month to month due to changes in the individual components which in the aggregate add up to Gross Realization. Such changes in the value of individual components are merely price changes and do not constitute a change in the Federal Formula. For example, if SMCRA fees and Black Lung taxes were doubled from $.906 to $1.812 per ton, this would not constitute a change in the Federal Formula. This change would therefore directly increase Gross Realization, taxes, and royalties.

II. GENERAL DESCRIPTION OF FIVE PERCENT LIMITATION CALCULATION

Gross realization will change no more than five percent (5.0%) for any change in the "Federal Formula", i.e. the Federal royalty regulations defining gross realization. For example, if the Federal Formula is revised so that SMCRA fees and Black Lung taxes are no longer included in gross realization, then the following test is triggered and the test will be performed each month thereafter.

1. Gross Realization

   (SMCRA fees)

   (Black Lung tax)

   Adjusted Gross Realization

2. Check for ± 5% Gross Realization:

   Adjusted Gross Realization ÷ Gross Realization = Percentage

3. If the percentage is less than or equal to 105% and greater than or equal to 95% of the gross realization before the change in the Federal Formula, then the "Adjusted Gross Realization for Royalty Calculations" will be the gross realization increased or reduced by the full impact of the change in the Federal Formula.

4. If the percentage is greater than 105% or less than 95%, then the Adjusted Gross Realization for Royalty Calculations is no more than 105% or

no less than 95% of the Gross Realization before the change in the Federal Formula.

III. PEABODY'S INVOICE CALCULATION

Peabody's invoice calculations to implement the ± 5% limitation are shown below:

A. Old Method:	Per Ton
Lessee's revenues on tons sold to one purchaser before Arizona taxes and royalties for one purchaser:	$14.786
Royalties @ 12.5%	2.188
	16.974
Arizona taxes @ 3.125% (including preparer's credit)	.526
Gross Realization	(1) $17.500

B. New Method (based on a change in the Federal Formula deleting SMCRA fees and Black Lung taxes of $.90 per ton):

1) Gross Realization old method	$17.500
Change in Federal Formula	(.900)
Adjusted Gross Realization	$16.600

2) Check for ± 5% limitation $16.600 ÷ $17.500 = 94.857%

3) Since 94.857% is less than 95%, the lower limit of 95% prevails

4) 95% of $17.500 or $16.625 becomes the "Adjusted Gross Realization for Royalty Calculations."

5) Royalties are $16.625 x 12.5% = $2.078

C. Peabody's invoice for one purchaser:	Per Ton
Lessee's revenues on tons sold to one purchaser before Arizona taxes and royalties for one purchaser:	$14.784[3]
Royalties @ 12.5%	2.078
	16.862
Arizona taxes @ 3.125% (including preparer's credit)	.523
Gross Realization As Invoiced	$ 17.385[2]

NOTES:

(1) The $17.500 is the "Gross Realization before a change in the Federal Formula".

(2) The $17.385 is the "As Invoiced" price.

(3) Lessee's revenues on tons sold to one purchaser may change due to coal quality premium/penalties being based on gross realization. In this example, revenues decreased by $0.002 per ton.

IV. SPECIFIC EXAMPLES OF THE FIVE PERCENT LIMITATION CALCULATION

EXAMPLE 1:

Modification to Federal Formula adding $.90 per ton to gross realization:

Gross realization before change	$18.500
Increase in Federal Formula	.900
Adjusted Gross Realization for Royalty Calculations	$19.400

$19.40 ÷ $18.50 = 1.0486

Conclusion: Since 1.0486 is less than or equal to 105%, the Adjusted Gross Realization for Royalty Calculations will be the amount reflecting the full impact of the $.90 increase in the Federal Formula or $19.40.

EXAMPLE 2:

Modification to Federal Formula removing SMCRA fees and Black Lung taxes of $.90 per ton from gross realization:

Gross realization before change	$18.500
Reduction in Federal Formula	(.900)
Adjusted Gross Realization for Royalty Calculations	$17.600

$17.60 ÷ $18.50 = .9514

Conclusion: Since .9514 is greater than or equal to 95%, the Adjusted Gross Realization for Royalty Calculations will be the amount reflecting the full impact of the $.90 reduction in the Federal Formula or $17.60.

EXAMPLE 3:

After modification to the Federal Formula removing SMCRA fees and Black Lung taxes of $.90 per ton posited in Example 2, the gross realization drops from $18.50 to $17.50.

New gross realization	$17.500
Reduction in Federal Formula	(.900)
Adjusted Gross Realization for Royalty Calculations	$16.600

$16.60 ÷ $17.50 = .9486

Conclusion: Since .9486 is less than 95%, the adjusted gross realization for royalty calculations will be limited to 95% of $17.50 or $16.625.

EXAMPLE 4:

After modification to the Federal Formula removing SMCRA fees and Black Lung tax from gross realization, supposed SMCRA fees and Black Lung tax have increased to $1.25 per ton from $.90 per ton and gross realization increases from $17.50 posited in Example 3 to $18.25.

New gross realization	$18.250
Reduction in Federal Formula	(1.250)
Adjusted Gross Realization for Royalty Calculations	$17.000

$17.00 ÷ $18.25 = .9315

Conclusion: Since the .9315 is less than 95%, the adjusted gross realization for royalty calculations will be limited to 95% of $18.25 or $17.338.

EXAMPLE 5:

Example 5 is a continuation of Example 4. Two changes in the Federal Formula have occured. The first is the one posited in Example 4: SMCRA fees and Black Lung tax are still excluded and are still $1.25. The second change in the Federal Formula excludes an item that is valued at $.60 (for illustration purposes, we'll call it Arizona sales tax). Also, Gross Realization is now $18.75.

1)	New gross realization	$18.750
	Reduction in Federal Formula resulting from the first change	(1.250)

	Adjusted Gross Realization for Royalty Calculations	$17.500

$17.50 ÷ $18.75 = .9333

Conclusion: Since the .9333 is less than 95%, the adjusted gross realization for royalty calculations will be limited to 95% of $18.75 or $17.813.

2)	Gross realization before calculating impact of second Federal Formula change	$17.500
	Reduction in Federal Formula resulting from second change	(.600)
	Adjusted Gross Realization for Royalty Calculations	$16.900

$16.90 ÷ $17.813 = .9487

Conclusion: Since the .9487 is less than 95%, the adjusted gross realization for royalty calculations will be limited to 95% of $17.813 or $16.922.

EXAMPLE 6:

Example 6 is a continuation of Example 5. The Federal Formula is changed for a third time, this time to exclude an item valued at $2.00. Everything else remains the same as in Example 5:

1)	New gross realization	$18.750
	Reduction in Federal Formula resulting from the first change	(1.250)
	Adjusted Gross Realization for Royalty Calculations	$17.500
	$17.50 ÷ $18.75 = .9333	
	.9333 is less than 95%, so limit = $17.813 (.95 X $18.75)	
2)	Gross realization before calculating impact of second Federal Formula change	$17.500
	Reduction in Federal Formula resulting from the second change	(.600)
	Adjusted Gross Realization for Royalty Calculations	$16.900
	$16.90 ÷ $17.813 = .9487	
	.9487 is less than 95% so limit = $ 16.922 (.95 X $17,813)	
3)	Gross realization before calculating impact of third Federal Formula change	$16.900
	Reduction in Federal Formula resulting from the third change	(2.000)

	Adjusted Gross Realization for Royalty Calculations	$14.900
	$14.90 ÷ $16.922 = .8805	
	.8805 is less than 95% so limit = $16.076 (.95 X $16.922)	

EXAMPLE 7:

Example 7 is a continuation of Example 6. The Federal Formula is changed, for the fourth time, this time to include an additional item valued at $3.00 Everything else remains the same as in Example 6:

1)	Gross realization	$18.750
	Reduction in Federal Formula resulting from the first change	(1.250)
	Adjusted Gross Realization for Royalty Calculations	$17.500
	$17.50 ÷ $18.75 = .9333	
	.9333 is less than 95%, so limit = $17.813 (.95 X $18.75)	
2)	Gross realization before calculating impact of second Federal Formula change	$17.500
	Reduction in Federal Formula resulting from the second change	(.600)
	Adjusted Gross Realization for Royalty Calculations	$16.900
	$16.90 ÷ $17.813 = .9487	
	.9487 is less than 95% so limit = $16.922 (.95 x $17.813)	

3) Gross realization before calculating impact of third Federal Formula change	$16.900
Reduction in Federal resulting from the third change	(2.000)
Adjusted Gross Realization for Royalty Calculations	$14.900

$14.90 ÷ $16.922 = .8805

.8805 is less than 95% so limit = $16.076 (.95 x $16.922)

4) Gross realization before calculating impact of fourth Federal Formula change	$14.900
Increase in Federal Formula resulting from the fourth change	3.000
Adjusted Gross Realization for Royalty Calculations	$17.900

$17.90 ÷ $16.076 = 1.1135

Conclusion: Since the 1.1135 is greater than 105%, the adjusted gross realization for royalty calculations will be limited to 105% of $16.076 or $16.880.

EXAMPLE 8:

The Federal Formula is changed, again on four separate occasions, this time all changes are additional items. The approach remains the same as Example 7:

1) Gross realization	$18.750
Increase in Federal Formula resulting from the first change	1.000
Adjusted Gross Realization for Royalty Calculations	$19.750

$19.75 ÷ $18.75 = 1.053

1.053 is greater than 105%, so limit = $19.688 (1.05 x $18.75)

2) Gross realization before calculating impact of second Federal Formula change	$19.750
Increase in Federal Formula resulting from the second change	3.000
Adjusted Gross Realization for Royalty Calculations	$22.750

$22.75 ÷ $19.688 = 1.156

1.156 is greater than 105% so limit = 20.675 (1.05 x $19.69)

3)

Gross realization before calculating impact of third Federal Formula change	$22.750
Increase in Federal Formula resulting from the third change	.350
Adjusted Gross Realization for Royalty Calculations	$23.600

$23.60 ÷ $20.675 = 1.141

1.141 is greater than 105% so limit = 21.704 (1.05 X $20.67)

4)

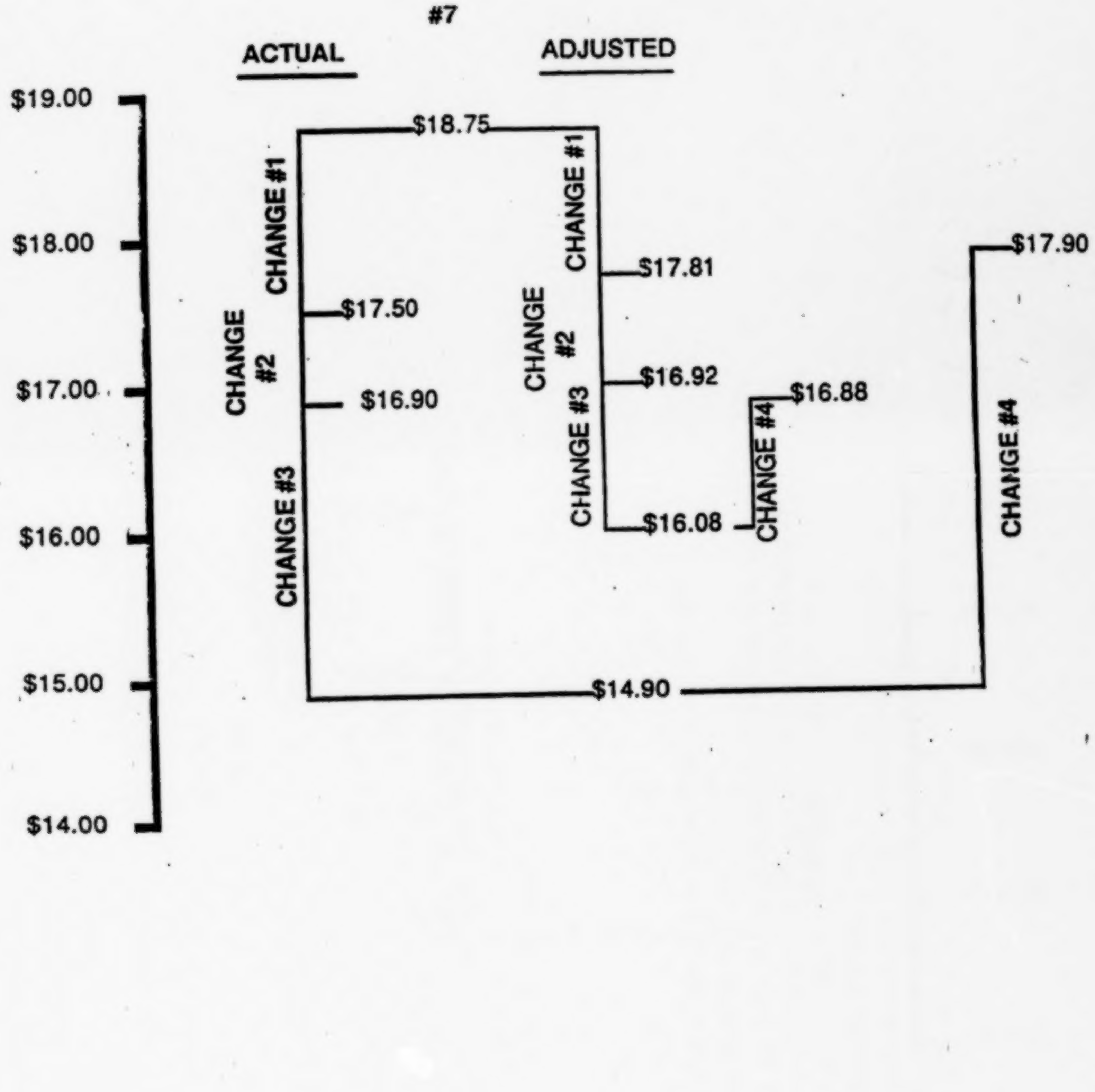
Gross realization before calculating impact of fourth Federal Formula change	$23.600
Increase in Federal Formula resulting from the fourth change	1.250
Adjusted Gross Realization for Royalty Calculations	$24.850

$24.85 ÷ $21.704 = 1.145

Conclusion: Since the 1.145 is greater than 105%, the adjusted gross realization for royalty calculations will be limited to 105% of $21.71 or $22.795.

EXHIBIT A-2
Page 9 of 10

GRAPHICAL PRESENTATION OF EXAMPLES 7 & 8



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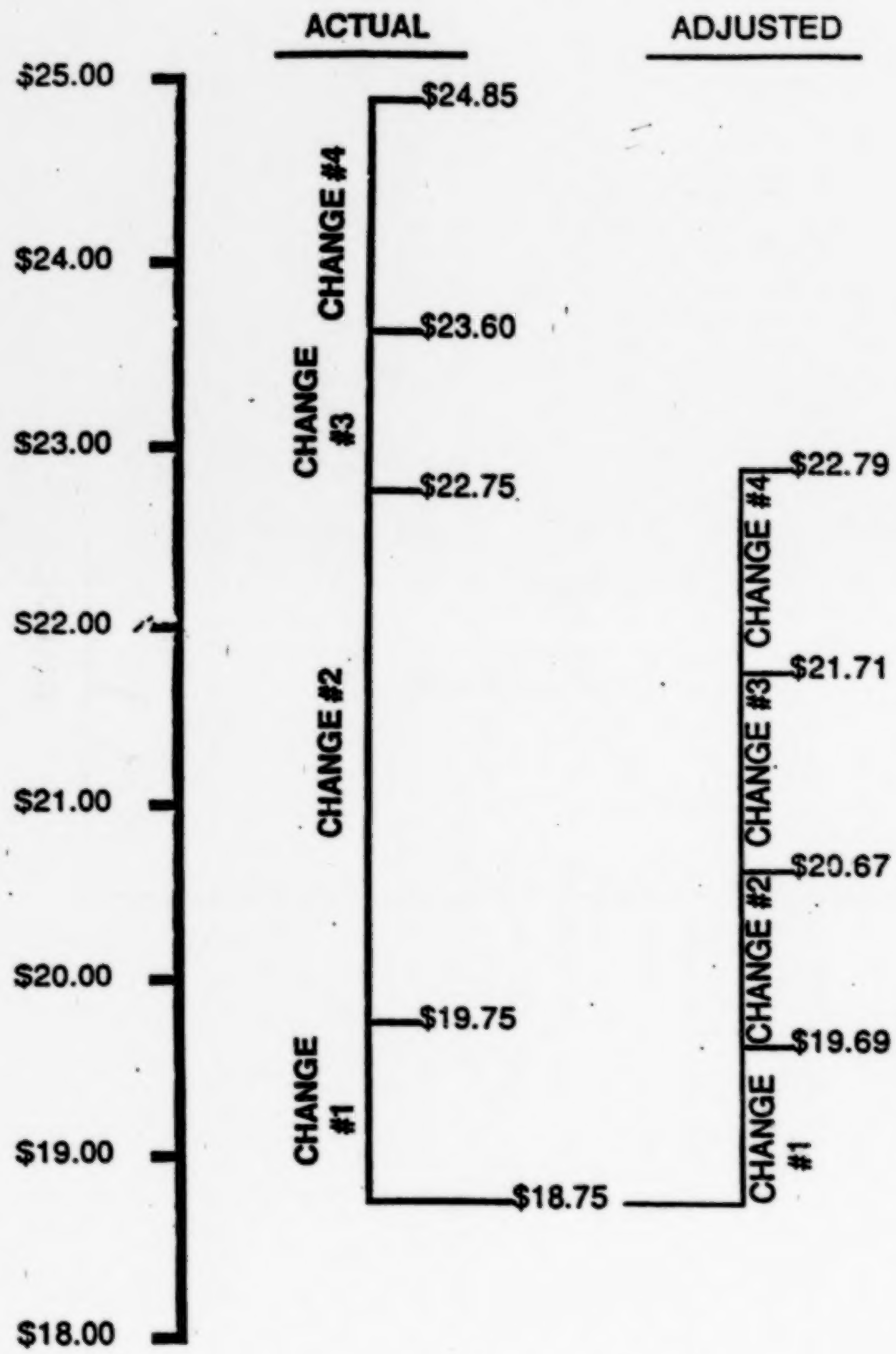
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ADJUSTED
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$24.00
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$24.85
CHANGE #4
$23.60
CHANGE #3
$22.75
CHANGE #2
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CHANGE #1
$18.75
$22.79
CHANGE #4
$21.71
CHANGE #3
$20.67
CHANGE #2
$19.69
CHANGE #1

LEASE NO. 14-20-0603-8580

ROYALTY-TAX CAP(1)

Example I

Royalty Element Article XXXV(a)		$6,803,299
Tax Element Article XXXV(b):		
Peabody Coal	3,507,600	
Transporter	75,000	
		3,582,600
Total Royalty/Tax Elements		$10,385,899

$$\frac{\text{Royalty/Tax Elements } \$10{,}385{,}899^{(2)}}{\text{Gross Realization } \$54{,}426{,}393^{(3)}} = 19.08\%$$

Since the actual Navajo Royalty - Tax Percentage of 19.08% is less than the Royalty - Tax Cap of 20.50%, no adjustment needs to be made for this calendar year.

NOTES:

(1) This calculation will be done for each purchaser for each calendar year after 1984.

(2) For the purpose of applying the Royalty-Tax Cap, royalties and taxes shall be those royalties and taxes recorded on Lessee's books for each calendar year using accrual basis accounting.

(3) Gross realization will be based on the annual "Adjusted Gross Realization for Royalty Calculations," as defined in Exhibit A-2.

LEASE NO. 14-20-0603-8580

ROYALTY-TAX CAP(1)

Example II

Royalty Element Article XXXV(a)		$6,803,299
Tax Element Article XXXV(b):		
Peabody Coal	5,261,400	
Transporter	112,500	
		5,373,900
Total Royalty/Tax Elements		$12,177,199

$$\frac{\text{Royalty/Tax Elements } \$12{,}177{,}199^{(2)}}{\text{Gross Realization } \$54{,}426{,}393^{(3)}} = 22.37\%$$

SINCE 22.37% is greater than 20.5% THEN

1) Reduce subsequent royalty payment by the excess amount.
2) Reduce subsequent BAT payment by the remaining excess amount.

NOTES:

(1) This calculation will be done for each purchaser for each calendar year after 1984.

(2) For the purpose of applying the Royalty-Tax Cap, royalties and taxes shall be those royalties and taxes recorded on Lessee's books for each calendar year using accrual basis accounting.

(3) Gross realization will be based on the annual "Adjusted Gross Realization for Royalty Calculation," as defined in Exhibit A-2.

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3) Reduce subsequent PIT payment by the remaining excess amount.
4) Reduce subsequent payment of other Indian Taxes by the remaining excess amount.

I.E.

20.5% of $54,426,393	$11,157,401
Total Royalty/Tax Elements	12,177,199
Excess Amount	$1,019,789

Royalty Payment	$6,803,299
Less: Excess Amount	1,019,789
Revised Royalties	$5,783,510

NOTES:

(1) This calculation will be done for each purchaser for each calendar year after 1984.

(2) For the purpose of applying the Royalty-Tax Cap, royalties and taxes shall be those royalties and taxes recorded on Lessee's books for each calendar year using accrual basis accounting.

(3) Gross realization will be based on the annual "Adjusted Gross Realization for Royalty Calculation," as defined in Exhibit A-2.

TRIBAL RESOLUTION

FORMULA FOR PARTICIPANTS' RIGHTS-OF-WAY

(a) For each such right-of-way or easement, Applicant shall pay the Secretary for the use and benefit of the Tribe a one-time payment computed on the basis of the following formula:

$$\text{Ra1} = (\text{R1}) \times \frac{(\text{Ic1})}{(\text{Ib1})} \text{ WHEREIN:}$$

Ra1 = The adjusted one-time payment for such right-of-way or easement.

R1 = The product of (a) the number of acres in the right-of-way or easement and (b) $200 per acre.

Ic1 = The final quarterly index of the Index of Implicit Price Deflators for Gross National Product (as presently published in Table 7.1-7.2 of the National Income and Product Tables, in publication by the United States Department of Commerce entitled Survey of Current Business, hereinafter referred to as ("IPD") last published immediately preceding the date of the grant of the right-of-way or easement is effective, provided that in no event shall Ic1 by less than the value of Ib1.

Ib1 = The final quarterly index of IPD last published before April 25, 1985.

(b) In addition to the payments set forth in (a) hereof, as consideration for each such right-of-way or easement, Applicant shall pay the Secretary for the use and benefit of the Tribe an annually adjusted payment of $10 per acre. The payment shall be calculated on the basis of the following formula:

$$\text{Ra2} = \frac{(\text{Ic1})}{(\text{Ib2})} \times \$10 \text{ WHEREIN:}$$

Ra2 = The adjusted annual payment for each acre.

Ic2 = The final quarterly index of IPD last published preceding the date each annual payment is due, provided that in no event shall Ic2 Be less than the value of Ib2.

Ib2 = The final quarterly index of IPD last published before April 25, 1985.

The foregoing formula shall not apply to renewals of or to rights-of-way or easements for which application was submitted to the Tribe before the effective date of the subject amendments, nor to any rights-of-way or easements for which application is made by an entity, or joint venture project which will wholly own the transmission lines for which the application is made, and in which the Tribe, its political subdivisions, or its enterprises have an ownership interest.

[Seal Omitted]

THE SECRETARY OF THE INTERIOR
WASHINGTON

SECRETARIAL APPROVAL

Based upon a review of all the terms of the amendments to Navajo-Peabody Coal Lease Numbers 14-20-0603-8580 and 14-20-0603-9910, and Hopi-Peabody Coal Lease Number 14-20-0450-5743, I find the amendments, subject to the following clarifications, findings, and condition, are in the two Tribes' best interests and do hereby approve said amendments.

Assignments

The advance assignment provision is approved. However, any future assignee must satisfy all other requirements of 25 CFR §211.26(a), including notice to the Secretary and the posting of a satisfactory bond at the time of assignment.

Rights-of-Way

Lessee must apply to the Secretary and obtain all off-lease rights-of-way on tribal lands pursuant to 25 U.S.C. §323 and the implementing regulations at 25 CFR Part 169.

Partition of the Former "Joint Use" Lands Requirement

I find that the lease amendments are substantially equivalent in what each Tribe will receive under its respective lease, taking into account the overall transaction.

Negotiation Requirement of 25 CFR §211.2

Without determining whether this regulation is applicable under these circumstances, I do hereby ratify the prior consent to negotiate given by the respective Area Directors and the Office of the Assistant Secretary - Indian Affairs.

Resolution of Outstanding Peabody Appeal

With the approval of these lease amendments, I direct the Assistant Secretary - Indian Affairs to dismiss Peabody Coal Company's appeal of the June 18, 1984, decision of the Bureau of Indian Affairs' Navajo Area Director readjusting the royalty rate to Navajo-Peabody Lease No. 14-20-0603-8580.

Documents to be Supplied by Lessee

Approval of the lease amendments shall not relieve lessee from any of its current duties to provide documentation and information to the Government.

NEPA

Based upon the Environmental Assessment and the Finding of No Significant Impact approved by the Assistant Secretary - Indian Affairs dated December 9, 1987 covering these lease amendments, the mining of additional coal dedicated to the leases by the amendments will not take place until the necessary NEPA review(s), as required by law, is triggered and appropriate action taken upon the submission of a revised mine plan(s) to cover the additional coal dedicated by the lease amendments.

Executed this the 14th day of December, 1987.

/s/ DONALD PAUL HODEL
DONALD PAUL HODEL

UNITED STATES COURT OF FEDERAL CLAIMS

No. 93-763L

NAVAJO NATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Scottsdale, Arizona
June 11, 1997

DEPOSITION OF HONORABLE MICHAEL C. NELSON

Prepare for:	Prepared by:
THE COURT	Deanna V. Pappas, RPR
(ORIGINAL)	

* * * * *

Q. Would you please state your name?

A. Michael C. Nelson

Q. And what is your business or profession, sir?

A. I'm presiding judge of the Apache County Superior Court.

* * * * *

Go ahead, sir.

A. I went to the University of Arizona Law School. I graduated in 1977. I went to work for DNA Legal Services in Window Rock, Arizona immediately upon graduating from law school.

Q. Okay.

A. I worked in the Fort Defiance office of DNA until, let's see—I thing it was '79.

Q. Two years?

A. Yes. An then from '79 to '82, I worked in the litigation and research unit. '83, actually, beginning of '83. I worked in the litigation and research unit of DNA, People's Legal Services, also in Window Rock. '83—it was April, I believe, of '83, I went to work in the Office of the Chairman of the Navajo Tribal Council. I worked there—

Q. Who was that at that time?

A. Mr. Zah was chairman then. He had been elected in November of '82, and he was inaugurated in January of '83.

Q. Okay, sir. Go ahead.

A. I worked at—my title was special staff assistant when I began working in his office. That shifted to counsel to the Chairman about two years later. I couldn't say exactly when that happened, sometime in '85. And then I worked in that capacity until January '87, when Chairman Zah left office. And I went into private practice.

Q. You went into private practice?

A. For a little over two years.

And then in March of '89, I was appointed by Governor Mofford to fill a vacancy in the position of

presiding judge of the Apache County Superior Court, and I've been there since.

* * * * *

Q. That's correct.

Do you—in view of what you've said, do you recall that, that, ultimately, a, a—do you recall hearing anything about a possible decision from the Department of the Interior on Peabody's appeal?

A. What I remember about this was that somehow we got word that Interior wanted us to attempt to, to go forward with the negotiations, and that was really when I got involved in it.

Q. You hadn't been involved in it up to that point at all?

A. No, no. That was—the status of negotiations were, were, they were at an impasse with the lease renegotiation team. We had word from Washington they wanted us to, to give it another shot. And that was my instruction from Chairman Zah, to see what was going on and give it another shot.

Q. So this would have been in '85?

A. I think so.

Q. You think so?

A. I think so.

Q. What, what—how did the communication come from—you said—I think you said Washington.

A. Uh-huh.

Q. Do you recall from whom in Washington?

A. I don't.

Q. Or what the medium of the message was?

A. I've thought about this since this particular issue came up. I tried to remember. I remember sitting in a meeting with Department of Justice representatives and the Attorney General's Office discussing—

Q. Navajo Department of Justice?

A. Yes, that's Navajo Department of Justice.

—and being—we were discussing the situation. And I was told that a letter was coming that, you know, that would formally say all this; that there would not be a decision made, but that they wanted us to try lease negotiations once again.

I don't recall ever seeing a letter like that. You know, my, my impression was that it was coming. I don't know that it ever did

Q. Who, who was, who was present at this meeting?

A. I believe Claudeen Arthur was the Attorney General, and Oscar Mason was head of Minerals, and I thing Elizabeth Bernstein, who was—worked with the tax commissions. She was an attorney that worked with the tax commissions.

Q. Elizabeth Bernstein?

A. I think.

Q. Is that B-e-r-n-s-t-i-e-n?

A. Yes. S-t-e-i-n, I believe.

Q. E-i-n, yes.

So you don't recall any information about how they had—

A. Found this out?

Q. —from whom they had received this information?

A. No. I really don't recall.

Q. Or whether it had been directly given to them, or perhaps someone else, the Chairman or someone else?

A. No. I really don't recall.

Q. Okay. Do you recall ever seeing in draft or other form any, any, any writing that might have been a prospective decision from the Department of the Interior?

A. No.

(Defense Exhibit No. 2 was marked for identification by Mr. Rogers.)

Q. BY MR. ROGERS: Let me show you what I'll mark as Defense Exhibit 2 and ask you to just glance over it a moment. I will tell you—I might even direct your attention to the last page, which sums up where it was going. Not the last—this is the wrong copy?

A. Page 6?

MR. FRYE: Uh-huh.

Q. BY MR. ROGERS: I have two copies of the same thing. Yes, primarily the last paragraph and the signature block.

Do you recall ever seeing this document or—

A. No.

(Defense Exhibit No. 3 was marked for identification by Mr. Rogers.)

Q. BY MR. ROGERS: Okay. I don't—I will do it for the record, but it's essentially the same. I'll show you what I've marked as Defense Exhibit 3. I will tell you that this is essentially the same letter with some minor exceptions. It's got a notation at the top in handwriting, and—

Did I give you one?

MR. FRYE: Not yet.

MR. BELLIS: Thanks.

MR. ROGERS: 3.

Q. It remains unsigned, and it has an additional —at the last two pages, the last page—next to the last page has a new ultimate paragraph.

I'd just ask you if you've—this is a slightly different version. Do you recall seeing it?

A. No.

Q. Okay. Or hearing about it?

I think, before, you said you didn't, but . . .

A. I don't recall hearing about it.

Q. Okay.

A. I would just like to take a minute.

Q. Oh, please do.

A. I find it curious to see what they said. Okay.

* * * * *

Q. What can you tell us about how the, the royalty tax cap evolved in the final agreement? Do you recall there was a royalty tax cap in the final agreement?

A. I do.

Q. Do you remember what it was?

A. Twenty and a half percent, I believe.

Q. Twelve and a half percent royalty and—

A. Eight percent—

Q. —eight percent taxes?

A. That's how it evolved.

Peabody was not willing to pay more than twelve and a half percent royalty rate, and I believe eight percent was the current tax rate that we, we had imposed for the P.I.T. and the B.A.T. Because that's where the interest tax and business activity tax—so that's where it came from. That's where the number came from.

Q. Now, the twenty and a half percent total is, at least as a number, is, is a pretty close approximation, in fact, a slight excess over the twenty percent royalty. What was the Tribe's view, as you recall it, as to whether or not they got this additional income by way of either royalty or taxes?

Did they, did they really distinguish? Did the Navajo position really distinguish, or were they satisfied that they were getting approximately the same amount of revenue?

MR. FREYE: Can I ask for clarification? Who are you saying when you say "they"?

MR. ROGERS: The Navajo position.

THE WITNESS: That's the same question I have when you ask me that question.

It really depends on who you're talking to. If I talk to the tax commission, they'll scream bloody murder about this kind of limitation. If I talk to minerals, they'll be unhappy about this limitation. If I talk to the financial people—and to them, twenty percent is twenty percent. So it really depends on who, who you're talking about.

Q. BY MR. ROGERS: Is that because the money basically goes into different pockets in the Navajo government?

A. No. Actually, it goes into the general fund. It makes no difference as far as where it goes. It's the people's own perception of what's important to them.

Q. Why, why is it—what makes it important to the tax commission?

A. Well, it is a limitation on taxes.

Q. Just because of the limitation?

A. Right. Because there is a cap, they can't raise their taxes.

Q. Okay.

A. And they, they were very much opposed to that.

Q. So it's not a question of affecting revenue. It's a question of limiting future taxes, at least on this particular entity?

A. Well, it would have affected revenue, too. If they could raise the tax rate, it would have increased the revenues.

Q. Okay. I'm sorry. Assuming, assuming that the, that the taxes were not ever going to exceed eight percent—

A. Uh-huh.

Q. —without being limited by contract, the amount of revenue wouldn't make any difference to, to the tax commission or the Tribe whether it came in by royalty or by tax?

A. I suppose that's true.

Well, we would have been looking at twenty percent on the north lease, twenty percent royalty, plus eight percent tax. So it would have been twenty-eight rather than twenty.

Q. Okay.

A. So there—you know, there is a difference as far as the rent, the royalty, the revenue that we would receive.

Q. With that background and important clarification then, what—how did, how did the politics of it work out in terms of the Navajo finally coming around and agreeing to the twenty and a half percent royalty tax cap? How was that, how was that series of, of discussions within the Tribe resolved within the Tribe?

A. Well, the reason we ultimately agreed to the cap, it revolved around a number of considerations. First, we didn't have the twenty percent on the north lease. We had an interim decision sort of. We had this thing from Donald Dodge, apparently, that said twenty percent. We didn't have final agency action—

Q. Right.

A. —setting it. So it, it was not firm.

There was some question—let me see if I can remember this. There were some questions about effective date of the taxes. There were some questions about imposition of tax prior to the Kerr-McGee decision, whether notice had been sent and whether Peabody had a chance to contest their valuations, things like that that went to back taxes, not to taxes from here forward.

* * * * *

THE WITNESS: Well, there other things that we felt we were getting out of it that we would not have gotten out of it.

Q. BY MR. ROGERS: A straight royalty adjustment?

A. A straight royalty adjustment on the north side lease.

The big one is that the royalty rate on the south lease was going up, too, and we would have had a great deal of getting it up, since there was not a reopen. So it would have required additional litigation and an unsure result on that.

The Peabody operation was moving from north to south, so, in a way, the royalty adjustment on the north lease was, to a certain extent, closing the barn door after the horse was out.

Because they had done a lot of mining on the north lease already. And one thing we did get out of the lease renegotiations was, I think we called it an equalizer. But it was a requirement that they actually do a certain amount of mining on the north lease. I think it was one ton for every two tons on the south lease. We required that that coal on the north lease actually be used up more efficiently.

Q. So the equalizer was to increase or at least seek to ensure that there was no discretion in production on the north lease?

A. Right. We were getting more money out of the north lease because we got the full royalty and tax, whereas, on the south lease, we only got a half. So it was important that that lease be fully mined.

And the water royalty rates went up significantly. And that was something that we wouldn't have gotten out of the—

Q. Uh-huh. Do you recall what they went from to?

A. They were virtually nothing under the old lease, like a dollar and a quarter or something an acre foot, and they went up to $600 an acre foot, if I remember right, for the first 28 acre feet, and then $800 an acre foot for each acre foot thereafter.

So it was a significant increase. And we wouldn't have gotten that. So there were pluses, and there were minuses.

Q. What were the minuses?

A. Well, we were taking less than the twenty percent. We were accepting limitations on our taxing liability. Those were the principal ones.

Q. What if there had been no limitation on the tax, but the royalty rate stayed at twelve and a half percent? Would there have been any problem at all with it, at that time, as the way the Navajo viewed it, anyone in the Navajo Tribe viewed it?

A. Internally, it would have been a lot easier. We would have had a lot less trouble.

Q. Is there not an issue with the Navajo tax, though, if it's—since it's a, it's a business activity or possessory interest tax? It wouldn't necessarily have to be applied equally to all taxpayers, would it?

A. Oh, it would have had to be—

Q. Yeah.

A. —yes. I think—that's not entirely true, but I think, as a general principal, that's true.

Subsequently, I learned you can do other things. You can create special taxing districts and get you around that kind of problem.

Q. I see. Okay.

A. At that point, that was the way we were approaching it, yes. And any tax imposed on Peabody would have to be imposed on all the taxpayers, and there are quite a few taxpayers.

Q. And they would become, at some point—barring some special mechanisms, like taxing, there would become some practical limit how much—even if Peabody could afford to pay some other, there could be some practical limit on how much other taxpayers could afford to pay?

A. Yes.

Q. That the Tribe would have to take into account in dealing with that?

A. Yes. That's correct. I mean, the taxes haven't been raised in the ten years since. And I think that's why.

Q. What, what other trade-offs, negative trade-offs to the Tribe of the deal was agreed to?

A. Well, the back taxes. We gave up a certain amount on the, the Peabody's liability for back tax payments. That's all I can think of right off.

Q. Would, would—is there any advantage to the Tribe, as you, as you viewed it, to have the additional coal provision in the lease? Or was that primarily a benefit to Peabody?

A. Well, I see it as an advantage to the Tribe.

Q. How so?

A. Well, I view the mine as an advantage to the Tribe. It's a revenue source. It's a source of jobs. The more coal, the more revenue, the more jobs. In my view, that's a good thing.

Q. There's some question that's been raised about it, as to whether or not it should have been—the additional coal should have been separately leased whereby—and the new lease put up for bid rather than give it to Peabody in these negotiations. And perhaps a better deal could have been struck, but that at least the Tribe ought to have gotten bonuses from a new lease.

Was there any discussion about that?

A. I believe there was. I thought we got some bonuses for new coal lease. I believe there was.

Q. To come later in time?

A. Yes, when they actually get to the new coal. But there are bonuses in here. As to whether we could have gotten more money out of another company, maybe.

My, my estimate was that would have been difficult. Getting the coal out of there is a real difficult problem. There are unique and expensive transportation mechanisms in place that would have to be replicated if you had another company up there.

Q. Uh-huh.

A. Or somehow you would have to deal with that.

I mean, there's a railroad that goes to the Navajo Generating Station, and then there's a pipeline that goes to Mohave Generating Station, neither of which would be available to another company without dealing with the companies that own them already.

Q. Uh-huh.

A. And that was the big problem with that lease initially, was getting the coal off Black Mesa. And that problem would have to be dealt with. So maybe you could, maybe you could get more out of some other company. But you've got to cross that bridge and the transportation.

Q. Now, the deal we've just been talking about was, of course, the deal that you, the Tribe, agreed to when you were there, and it was not approved at that time and a new administration came in. Did you ever have a later chance, after you left Navajo, to look at and understand the final deal that was approved by the Secretary of the Interior?

A. I saw, I saw it briefly.

Q. Did you—is there anything about it that differed from the deal you all had struck?

A. I saw it briefly. My recollection is that there were some slight differences in the tax provisions.

Q. But, essentially, the major provisions were the same?

A. I believe they were. I didn't look at them, really, in any depth.

* * * * *

Q. Now, you mentioned that one of the reasons that the Navajo Nation, at least you and the Chairman, then Chairman Zah, was willing to accept the negotiated package was that you didn't have final agency action on the twenty percent royalty appeal.

Would your bargaining position have changed any if Exhibit 2, I believe, the draft decision that was teed up, in John Fritz' words, for his signature, had been issued affirming the twenty percent royalty rate as final for the Department?

A. Yes.

Q. How would it have been affected, your negotiating position?

A. Well, it would have given us additional leverage. Peabody's position had always been that twelve and a half percent was the ceiling as far as any royalty rate they were willing to pay or that we could force them to pay.

If we had final agency action, this would be subject to review only if it was shown to be arbitrary and capricious. And I was personally convinced that it was not that, that it was supported by the record, that it had been made below. I would have felt in a much stronger position as far as the twenty percent on the north lease, and it would have broken that wall, if you will, for the twenty—twelve and a half percent ceiling or broken the ceiling—

Q. Okay.

A. —that Peabody had imposed.

In addition, in any lease—any negotiation, you always make decisions as to whether you're going to continue the negotiation or not. And this would have been something in hand that we did not have that we would have had to consider at every stage of the negotiations.

Q. Would it have been a significant impact, as far as you're concerned, on, on the way you would have negotiated this deal out, to have the twenty percent decision as a final agency action?

A. I would have felt in a much stronger position.

Q. Okay. Now, the other—at least one other factor that you mentioned was the continued litigation delayed any revenues coming in. Were you living on the Navajo Reservation at that time?

A. Yes, I was.

Q. And were you familiar with the conditions on the Navajo Reservation generally?

A. Yes.

Q. And what were those conditions?

A. Not good. We had a population that was very young. The median age was eighteen and a half years. The faci—infrastructure was not in place to provide them any sort of living conditions that were acceptable to a generation that was growing up with TV, that knew there were other things out there, that wanted indoor plumbing, that wanted paved roads, that wanted jobs. The need for money was great, and it was growing daily.

Q. Did that need for revenues provide any pressure for you to stay at the negotiating table and not engage in litigation that at least Interior suggested to us was going to be ongoing for some time?

A. Oh, most definitely.

Q. One question I had, and, and it's a technical question related to the plus—one of the pluses that I thought you testified about, in that the negotiated amendments and that the mining was moving from the north to the south.

Were you aware at the time that the 9910 lease had an equalization provision that required Peabody to mine one ton of north coal for every one ton of 9910 coal?

A. I don't recall that, but it doesn't surprise me.

Q. And in terms of fundability of a royalty dollar and a tax dollar, you would agree, I guess, that a royalty dollar in the door looks exactly the same as a tax dollar in the door?

A. Yes.

Q. But a royalty dollar on paper and a tax dollar on paper could be different, couldn't they, if there were, for example, a tax waiver for all coal going to the Navajo Generating Station due to provisions in the Navajo Generating Station Plant Site lease?

A. Start the question again.

Q. Certainly. Were you aware that there was a, a tax waiver included in the Navajo Generating Station Plant Site lease?

A. Yes.

Q. So that a 20.5 percent royalty, plus tax cap really doesn't equate to 20.5 percent of royalties, plus taxes, nor any coal going to the Navajo Generating Station?

A. That's correct.

Q. So that the revenues that the Navajo Nation receives under a twenty percent royalty rate is quite a bit greater, hypothetically at least, than a 20.5 percent royalty, plus tax cap, when the royalty there is set at twelve and a half percent?

A. That's correct.

Q. Okay.

A. There's no way that you could get to the twenty in the end.

Q. Okay. Now, I wanted to ask you, also, a question about Exhibit 9, which I believe is here in front of me.

MR. ROGERS: Oh, let me give you that.

Q. BY MR. FRYE: We've had testimony from Tim Vollmann in his deposition that this document was less than candid, and we've also had testimony from Colleen Kelley, the author or at least the drafter of this document that, if all the Navajo Nation had known at the time it received this letter was that a decision had not yet been finalized, she would have been outraged.

I wanted to ask you where you found in this letter, if anywhere, the indication that the decision on the appeal was being withheld consciously or unconsciously by the, by the Department of the Interior.

A. Well, the tax doesn't say that.

Q. So you're reading between the lines?

A. Yes.

Q. Okay. And you have a skill that I do not.

A. Well, it's . . .

Q. Okay. When you see the words in the second paragraph of Defense Exhibit 9, "a decision on the appeal is currently being considered by the Deputy Assistant Secretary for Indian Affairs," what—if you can recall, what did that indicate to you at the time that Defense Exhibit 9 was received?

A. Well, what this said to me was that they were not in agreement as far as what the decision should be within the Department.

Q. Okay. So that there was some internal dissent within the Department about the merits of the appeal?

A. Correct.

If—let me, let me clarify something.

Q. Uh-huh.

A. If I said "sitting on the decision," that's really what I meant, was that there wasn't a final decision yet.

Q. Okay.

A. That they were still chewing on it.

Q. Okay. So when you said in your prior testimony "sitting on the decision," you didn't mean the decision had already been reached or at least drafted and people were just not going to issue it?

A. No.

Q. You meant that there were some internal deliberations still going on within the Department?

A. Correct, that is hadn't been resolved internally.

Q. Okay.

A. And it wasn't being brought forward to decision. No one was saying, "Do it already"—

Q. Okay.

A. —you know.

Q. Now, having seen the decision documents that were prepared, I think they're Exhibits 2 and 4, Defense Exhibits 2 and 4, and having seen Exhibit 8, which is the signed version of Peabody's draft that it prepared for Hodel to sign—

MR. ROGERS: It's 2 and 3, actually. I think it's the decision documents.

MR. BELLIS: Yes.

MR. FRYE: Yes. Thank you, sir.

Q. How does that make you feel?

A. Well, I'm not real pleased with it. I don't know how else to express this. My view was that Interior was supposed to be helping us, that they were in our corner, that they weren't some sort of neutral arbitrator acting between two equal parties. And I don't think this is consistent with that role.

Q. Well—and, in fact, it appear to me that, when you look at Exhibit P-1, they've essentially delegated the trust duty to the adversaries of the Navajo Nation. Is that consistent with how you view Peabody's drafting of material for the Secretary, using a intermediary, paid intermediary to get it signed?

A. Well, they certainly accepted their position verbatim.

Q. Do you know how close a relationship Stanley Hulett had with Secretary Hodel?

A. I have no idea.

MR. FRYE: I'd like to talk with counsel for just a second, if I could.

(Brief recess taken at 5:20 p.m.)

MR. FRYE: That's all I have.

MR. ROGERS: Let me just ask one or two questions, and then we'll let you go, sir.

FURTHER EXAMINATION

BY MR. ROGERS:

Q. On the question of having strengthened Navajo bargaining position by getting final agency action on the twenty percent appeal, did you say that you, you felt the Navajos were in a strong position of, of having that affirmed in a judicial review based on a capricious, arbitrary and capricious standard?

A. That's what I felt, yes.

Q. On what did you base that, that view?

A. I was aware of what had been presented to the Area Director. As I now look through these documents more, this comes back to me, that that is where it was presented. I knew what had been presented to him.

Q. You did?

A. Yes. An I think it was a supportable conclusion at the time the Area Director made it. I think it could have—it was a weighing decision, but once it had been made as final agency action, I felt there was plenty in there to, to support the decision.

Q. What, what do you recall specifically was presented to the Area Director? What can you recall to support this decision?

A. As I remember it, there was a technical study that counsel for Energy Resources Scribes had done on coal royalties that was substantial. I remember referring to that when we were doing these lease renegotiations, and I felt it was good. I felt it was a solid document.

Q. Do you recall a report from Schwab?

A. I really don't remember the names.

Q. Okay. Did, did—in the—at the time or returning to negotiations—well , let me strike that.

At the time of learning that the Secretary or the Department wanted the Tribe to try the negotiating again, when you first became involved actively, was there discussion about administrative, alternative administrative relief or perhaps judicial relief that the Tribe might take to precipitate a decision nonetheless in view of the fact that it would strengthen bargaining position?

A. If I'm remembering this right, we did discuss it, and the feeling was that that's a good way to get a bad decision. If you force the Secretary to decide, he's likely to go, "Oh, well, here. You've got it."

Q. Do you recall what mechanisms you thought might be available to you to precipitate the decision?

A. I don't. I, I recall a discussion as far as taking some sort of court action—

Q. Do you recall who was involved in that? I'm sorry. I didn't mean to interrupt your answer.

A. It would be something like a special action, like they would take against a judge to get him to make a decision. But I remember 12 years ago what we called it then.

Q. Was there a discussion about seeking, within the Department of the Interior, removing the decision to the Interior Board of Indian Appeals, taking it out of the Assistant Secretary's hands?

A. I don't recall that.

Q. Okay.

A. There may have been, but—it's not inconsistent with what was, what was happening—

Q. Okay.

A. —but I, I don't have any independent recollection of that.

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, DC 20240

December 9, 1987

Memorandum

To: Secretary

From: Assistant Secretary - Indian Affairs

Subject: Request for Secretarial Approval of the Amendments to (Black Mesa Coal Mining Lease) Navajo-Peabody Coal Lease Numbers 14-20-0603-8580 and 14-20-0603-9910, and Hopi-Peabody Coal Lease Number 14-20-0450-5743

Attached for your approval are the subject amendments evaluated by the Navajo and Hopi Tribes with Peabody Coal Company which were submitted by the parties. The Bureau of Indian Affairs and the Office of the Associate Solicitor-Indian Affairs have thoroughly reviewed these amendments pursuant to applicable statutory and regulatory requirements.

I have examined the proposed lease agreements. It is my opinion that the parties have negotiated at arm's length, in good faith to reach these agreements. Through negotiations and the reasonable and acceptable exercise of business judgment for a transaction of this type, I believe the parties have reached fair and equitable agreements.

One issue that has been of particular concern to me is the valuation of the coal for royalty purposes. The agreement provides that the existing rules on coal product valuation shall apply and that in the event the Federal Government enacts new coal product valuation regulations it shall not affect the royalty paid to the tribes by more than 5 percent. Approximately one year ago, the Tribes had reached an agreement with Peabody that did not contain this cap/floor. Upon learning of the proposed produce valuation regulations, the tribes did an analysis of the impact. Renegotiation over this point took almost one year and ended with the proposed cap/floor of 5 percent now included in the lease. I am told that additional consideration was negotiated in the lease also as a result of this. I am convinced that the tribes have adjusted their risk in this matter and are adequately protected from any change in federal product valuation regulation changes.

It is my recommendation that you approve the amendments subject to the following findings, clarifications and condition based on the forgoing and attached information and reviews of the entire transaction. For detailed information, see the attached analysis of the Acting Associate Solicitor, Indian Affairs, the Environmental Assessment, and the Finding of No Significant Impact.

Attachments